

**H.R. 3655, THE BEREAVED CONSUMER'S BILL  
OF RIGHTS**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON COMMERCE, TRADE,  
AND CONSUMER PROTECTION  
OF THE  
COMMITTEE ON ENERGY AND  
COMMERCE  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED ELEVENTH CONGRESS

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## **H.R. 3655, THE BEREAVED CONSUMER'S BILL OF RIGHTS**

**WEDNESDAY, JANUARY 27, 2010**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCE, TRADE,  
AND CONSUMER PROTECTION,  
COMMITTEE ON ENERGY AND COMMERCE,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 10:10 a.m., in Room 2123 of the Rayburn House Office Building, Hon. Bobby L. Rush [Chairman of the Subcommittee] presiding.

Members present: Representatives Rush, Schakowsky, Stupak, Green, Barrow, Whitfield, Gingrey and Scalise.

Staff present: Michelle Ash, Chief Counsel; Anna Laitin, Professional Staff; Timothy Robinson, Staff; Will Cusey, Special Assistant; Daniel Hekier, Intern; Elizabeth Letter, Special Assistant; Sarah Kelly, Intern; Shannon Weinberg, Counsel; Brian McCullough, Senior Professional Staff; and Sam Costello, Legislative Analyst.

### **OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. RUSH. The Subcommittee on Commerce, Trade, and Consumer Protection is called to order.

We are convening for the hearing on the Bereaved Consumer's Bill of Rights Act of 2010 and I want to, before we begin giving opening statements, I want to welcome all who are gathered and welcome our witnesses for the day, and I want to thank the members of the subcommittee for their presence.

The chair recognizes himself for 5 minutes for the purposes of an opening statement.

In early July, 2009, horrific allegations of unlawful grave desecration shocked the Nation as news about the unauthorized removal of hundreds of human bodies and the reselling of grave plots at Burr Oak Cemetery in Alsip, Illinois, which is in my district, came to light, and as chair of this subcommittee and the representative of the first city of Illinois I wasted no time in conducting a field hearing in Chicago on July 27, 2009. My primary purpose in holding the field hearing was to hear bereaved survivors share their feelings of intense loss and bewilderment upon the learning of what happened at Burr Oak. I also wanted to learn more about their past dealings with Burr Oak, the staff and the red flags of gross neglect they had witnessed at the cemetery.

Upon returning to Washington, any suspicions that Burr Oak was an aberration or a mere figment of society's imagination quickly diminished. A little more than a month following our Chicago field hearings fresh allegations of unlawful grave desecration and the resell of grave plots at Eden Memorial Park and a Jewish cemetery in Mission Hills, California and the Melwood Cemetery in DeKalb County, Georgia also came to light. Thus ushers in a period of deep sorrow, grief and loss for some survivors and the loved ones responsible for finalizing funeral arrangements and services. These very consumers in their state of bereavement become easy selling targets for an abundance of unnecessary goods and services that get slipped into funeral and burial packages. Consumers also fall prey to a host of misrepresentation by managers and sales staff that range from bogus claims about what State laws actually require to patently false interpretations of their own written regulations.

The same bereaved consumers equal free cash for unprincipled owners and managers of cemeteries and crematoriums. The question is why. The easy answer is very easy. Sometimes it is just too easy for those who are out to earn a quick buck to prey on misinformed consumers. Lacking the experience with the funeral and burial section, these consumers cannot be reasonably expected to effectively negotiate fair practice, choices and contractual terms that apply to burial goods contracts and leases on land on graveyard property.

Planning for one's own or even a loved one's death is typically a once-in-a-lifetime experience. It is also compounded by all kinds of unpredictability. But just as death often comes like a thief in the night, bereaved consumers should not be left wondering who in fact was and is the real thief, death or the cemetery sales sources.

I introduced in September the Bereaved Consumer Bill of Rights. Today this subcommittee is reviewing this draft bill in its first hearing under new legislative session. This bill is all-encompassing and there are many parts to this bill. I have been earnest in respecting existing State laws as I drafted this bill. The bill will authorize both the FTC and the States' Attorneys Generals and other designated State entities to enforce its requirements.

In closing, I want to thank each one of our witnesses again for appearing today and I look forward to this hearing and I yield back the balance of my time.

Now, I recognize the ranking member of the subcommittee, Mr. Whitfield, for 5 minutes for the purposes of opening statement.

**OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY**

Mr. WHITFIELD. Chairman Rush, thank you very much and we are delighted that you are having a hearing on this important subject.

Certainly when families face death and have to find themselves making decisions about the disposal of bodies and so forth, they are particularly vulnerable. And although we hope that people will act in good conscience, unfortunately we find ourselves having to write Federal and State laws and regulations to prevent the unscrupu-



lous few from preying on the bereaved as profit centers in their state of emotional disarray. Thankfully, almost all funeral and cemetery businesses are honest actors who seek to assist the families and never violate the law but as you said, bad actors do persist. Incidents in Georgia, Florida and more recently Illinois indicate a few rogue operators do not respect the law or the same values that we hold.

Allegations of illegal disinterment are being investigated at Burr Oak Cemetery in Illinois. Evidence suggests several of the workers may have engaged in reprehensible conduct to desecrate burial plots and resell those plots for profit. It is my understanding they face criminal charges and could be sentenced to prison time if they are convicted.

In the wake of Burr Oak, the Governor of Illinois convened a task force to look into this situation and make recommendations for that State. I understand he signed a new law earlier this month which makes changes to the regulation of cemeteries in Illinois. Similarly, Georgia and Florida responded quickly to their unique problems with new State laws.

So the question really becomes what role, if any, the Federal Government should have beyond its current authority. The Commission has the authority to bring action for either violations of the Funeral Rule which is about transparency or for violations of unfair or deceptive practices under its General Section 5 authority provided the violator was under its jurisdiction.

Chairman Rush has introduced H.R. 3655 to address problems some people have identified in the funeral and cemetery industry and we all commend him for taking that action introducing this legislation intended to help consumers. While all of us support the practice of accurate and meaningful disclosure to consumers, the question does arise is the Federal Government the best entity to do this or do the States do a better job of it. We do know that all States have laws on their books and regulate the industry but as the Illinois task force concluded in its report, regulatory oversight by State regulators happens to be one of the major problems in that incident and so even if we require more disclosure, it may or may not stop criminal activity that occurred. Another potential problem of expanding the FTC's role is the perception by States that the Federal Government will be the primary entity with jurisdiction, and if that happens will the States have less incentive and maybe since all of them have financial difficulty anyway, just step back and let the Federal Government do it and maybe the Federal Government may not be as effective.

In addition to required disclosures, the proposed legislation seeks to fill the regulatory gap of the FTC's enforcement authority by providing the Commission new authority over non-profit entities operating in the funeral and cemetery business. This would be a major expansion of the FTC's enforcement authority and certainly should be considered carefully, particularly in light of many other industries under the FTC's jurisdiction that have substantial participation of non-profits. If we want to consider sweeping non-profits under the FTC's jurisdiction, I believe it would be better to examine it in the context of the FTC's overall authority as it may

have additional implications for State and municipality entities that operate as non-profits.

Chairman Rush, I do commend you for holding this hearing and certainly this is an issue that is very important. It has a great impact on our society and we look forward to working with you to try to determine a proper course of action. Thank you very much.

[The prepared statement of Mr. Whitfield follows:]

Opening statement of the Honorable Ed Whitfield  
Subcommittee on Commerce Trade, and Consumer Protection  
Hearing on H.R. 3655, the “Bereaved Consumer’s Bill of Rights Act of  
2009”  
January 27, 2010

Thank you, Mr. Chairman.

The passing of a loved family member can be very difficult. It is expected that mourning the loss of someone close can require time to return to a sense of normalcy. Unfortunately, before that can occur, arrangements may have to be made if they were not previously addressed. Not even the best preparation in advance can address every detail that needs attention at the time of passing.

It is in these times of grief that compassion and empathy flow to the bereaved from normal people. Unfortunately we have had to write Federal and state laws and regulations to prevent the unscrupulous few from preying on the bereaved as profit centers in their state of emotional disarray. Thankfully, almost all funeral and cemetery businesses are honest actors who seek to assist the families and never run afoul of the law.

But bad actors do persist. Incidents in Georgia, Florida, and more recently Illinois, indicate a few rogue operators do not respect the law or the same values we hold. Allegations of illegal disinterment are being investigated at Burr Oaks cemetery in Illinois. Evidence suggests several of the workers may have engaged in reprehensible conduct to desecrate burial plots and resell the plots for profit. They face criminal charges and could be sentenced to prison time if they are convicted.

In the wake of Burr Oaks, the governor of Illinois convened a task force to look into the situation and make recommendations. I understand he signed a new law earlier this month which makes changes to the regulation of cemeteries in Illinois. Similarly, Georgia and Florida responded quickly to their unique problems with new state laws.

So the question is what role – if any – the Federal government should have beyond its current authority. The Commission has the authority to bring action for either violations of the “Funeral Rule” or for violations of unfair or deceptive practices under its general Section 5 authority, provided the violator was under its jurisdiction.

H.R. 3655, introduced by Chairman Rush, seeks to address problems some people have identified in the funeral and cemetery industry. I commend you, Chairman Rush, for your interest in putting forth legislation intended to help consumers. While I support the practice of accurate and meaningful disclosure to consumers, I have concerns with it emanating from the Federal government in this industry. All the states have laws on their books and regulate the industry. But as the Illinois Task Force concluded in its report, regulatory oversight by the state regulators was one of the major problems. And even if we require more disclosure, it would not have stopped the criminal activity that allegedly occurred, as criminals tend not to obey the laws.

Another potential outcome of expanding the FTC's role is the perception by states that the Federal government will be regulating full time. This could provide a disincentive – particularly for cash-strapped states – to provide any meaningful oversight at the state level.

In addition to required disclosures, the proposed legislation seeks to fill the regulatory gap of the FTC's enforcement authority by providing the

Commission new authority over non-profit entities operating in the funeral and cemetery industry.

This is a major expansion of the FTC's enforcement authority and should be considered carefully, particularly in light of many other industries under the FTC's jurisdiction that have substantial participation of non-profits. I understand the policy reason in this legislation: to protect consumer regardless of whether the entity offering the service operates for profit or not. But proposing an expansion of their authority in a piecemeal fashion would establish disparate treatment for non-profits depending on what services they offer. For example, universities and colleges have been a substantial source of data breaches, but fall outside the enforcement authority of the FTC in the data security legislation we passed. If we want to consider sweeping non-profits under the FTC's jurisdiction, I believe it would be better to examine it in the context of the FTC's overall authority as it may have additional implications for state and municipality entities that operate as non-profits.

I commend the Chairman for holding today's hearing to examine this legislation. I think we all agree we want to ensure consumers are treated

fairly in their moment of grief and not taken advantage of by unscrupulous actors. I look forward to today's testimony and to hear suggestions how we can accomplish this most effectively.

Mr. RUSH. The chair now recognizes the gentlelady from Illinois, Ms. Schakowsky, for 2 minutes for the purposes of opening statement.

**OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Ms. SCHAKOWSKY. Thank you, Mr. Rush, for holding this hearing and for introducing this important bill and I am glad to be a co-sponsor of your bill, the Bereaved Consumer's Bill of Rights Act. I want to welcome our witnesses including two Illinois witnesses, the Honorable Patricia Brown Holmes, Chairman of the Illinois Cemetery Oversight Task Force and Randall Earl of the National Funeral Directors Association who is a funeral director in Decatur, Illinois.

Last year a cemetery in my State, as Mr. Rush has gone into in some detail, made national headlines after some of its employees horribly violated the dignity of individuals interred at the cemetery in the name of nothing more than greed. Last July this committee held a field hearing in Chicago where we heard the heartbreaking testimonies from families, including some of my constituents who no longer knew where to go to mourn their loved ones. One of my constituents, Mrs. Rose Herd, went to the cemetery to order headstones for her son, daughter and mother and while at the cemetery a worker looked at the map and said "someone is buried on top of the others in that grave." Imagine having to hear that.

But one of the big takeaways that I had from that hearing was something that is mentioned in our briefing paper which is the asymmetrical regulatory framework between funeral homes which are stringently regulated by the FTC on one side and the cemeteries, crematory and mausoleums on the other which are not, and I think that is exactly what our bill would do. It would require the FTC to issue rules that would protect the rights of consumers when they are facing one of the most difficult times in life, burying a loved one or preparing for their own funerals.

Again, Mr. Chairman, I thank you for holding this hearing and I hope it is the first step toward passing this important bill. I yield back the balance of my time.

Mr. RUSH. The chair thanks the gentlelady and the chair will also note that the gentlelady and four other members of this subcommittee participated in the field hearing held in Chicago, and I really want to place on the record my deep seated appreciation for your participation at the field hearing, each and every one of you.

The chair now recognizes Dr. Gingrey for 2 minutes for the purposes of opening statements.

**OPENING STATEMENT OF HON. PHIL GINGREY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA**

Mr. GINGREY. Mr. Chairman, I want to thank you for calling today's hearing on H.R. 3655, the Bereaved Consumer's Bill of Rights Act of 2009 in order to review the existing structure of Federal regulations that oversee consumer protection of the funeral industry, particularly at a time when purchasing decisions are made in the midst of grief.



Unfortunately, we are here today largely in response to incidents that occurred at Burr Oak Cemetery in Alsip, Illinois that resulted in charges of the unauthorized removal of human remains from graves and the subsequent reselling of those plots. As the story continued to unravel, shocking details were revealed and my deepest condolences go out to the families of those whose remains were desecrated.

Mr. Chairman, my home State of Georgia, just outside of my congressional district has also been the subject of a national scandal on this very issue. Back in 2002, the Tri-State Crematory in Walker County was at the center of a criminal investigation where this company failed to cremate the remains of over 300 people and even worse than that, they improperly stored the remains, and for the families of northwest Georgia that this scandal affected I feel nothing but sorrow for the trauma that they experienced.

Clearly both of these incidents provide this subcommittee with a good reason to review the ways in which funeral services are regulated. Due to rampant abuses within the funeral industry, the Federal Trade Commission issued the Funeral Rule in 1984 to ensure more transparency on information that was provided to consumers regarding pricing structure in funeral services. According to the FTC at a field hearing that Chairman Rush held in Chicago last July on this matter, compliance with the Funeral Rule appears to be at a good level.

Mr. Chairman, H.R. 3655 seeks to address some of the problems that continue to exist within the funeral industry; however, despite its overall goal I do fear that H.R. 3655 may be duplicative in nature because the Funeral Rule already addresses a number of these regulations and unfortunately this legislation would not have prevented what occurred at either Burr Oak or Tri-State Crematory. At the same time, in the aftermath of these scandals both the State of Illinois and my home State of Georgia acted swiftly to address criminal activity and I commend them for that quick action. As we move forward on this legislation I believe we need to focus on the existing tools of enforcement.

I look forward, Mr. Chairman, to hearing from today's panel and I yield back the balance of my time.

Mr. RUSH. The chair now recognizes the gentleman from Texas, Mr. Green, for 2 minutes for the purposes of an opening statement.

**OPENING STATEMENT OF HON. GENE GREEN, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. GREEN. Thank you, Mr. Chairman, for holding this hearing on your legislation to protect the rights of those who are arranging funeral services who are grieving from the loss of a loved one. I don't think anybody on our committee hasn't gone through that with one of our parents or our in-laws and how traumatic it is, and our children will have to go through that for us someday.

Bad actors exist in every industry but the thought that someone would mislead and take advantage of a family that has just lost a loved one is especially dishonest and troubling. The last thing someone wants to do following the death in a family is be pressured into purchasing unnecessary, overpriced services, nor do they

want to have to shop around to make sure they are not being scammed into drastically overpaying for a service.

A number of States have laws regulating practices related to funeral services, others have not or do not have updated laws on the books. Because of that, we need to set a floor for the rights of individuals planning a funeral and burial.

Mr. Chairman, I strongly support your legislation, the Bereaved Consumer's Bill of Rights, to develop and issue rules prohibiting unfair and deceptive acts and practices for sellers of funeral and burial goods and services. This legislation required the Federal Trade Commission which currently regulates funeral homes under the Funeral Industry Practices Trade Regulation Rule to expand that rule to cover other entities involving and providing funeral and burial services such as crematories, cemeteries, caskets retailers and headstone and market retailers.

Mr. Chairman, the incident at Burr Oak Cemetery in Illinois and the several others that made news in recent years demonstrate the further action needed to be taken to provide peace of mind to those who recently suffered a loss. This legislation will provide basic requirements while not interfering with States' efforts so grieving families know they will not be misled or taken advantage of.

Again, Mr. Chairman, I want to thank you for both the bill and also holding the hearing, and welcome our witnesses, and I yield back.

Mr. RUSH. The chair now recognizes the gentleman from Louisiana, Mr. Scalise, for 2 minutes.

**OPENING STATEMENT OF HON. STEVE SCALISE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA**

Mr. SCALISE. Thank you, Mr. Chairman.

All of us here today at some point in our lives have experienced the death of a loved one and have gone through the grieving process. During this painful time, we should be able to take comfort in knowing that our loved one's remains are being treated with dignity and respect. This comfort should be based on trust of the funeral home, the cemetery, the crematory handling the remains as well as on the integrity of the funeral service profession as a whole. Unfortunately, we have seen instances where this trust has been violated in appalling ways. The most recent example being Burr Oak Cemetery which has prompted this legislation we are examining today and the previous field hearing this subcommittee held in July.

The desecration of graves and the mishandling of remains that took place at Burr Oak Cemetery were despicable and hopefully we never see this happen again. I believe we can all agree that no one should be taken advantage of during this time of heightened emotional distress. In the case of Burr Oak Cemetery and in similar cases in Florida and Georgia the States acted quickly to determine what led to these horrible acts and what laws and regulations were broken or needed to be improved or put in place to prevent this from happening again. This leads me to question whether Federal legislation is the most appropriate.

Again, let me stress that the cases in Illinois, Georgia and elsewhere are terrible and I am pleased that we are examining ways to protect consumers while they are grieving the loss of a loved one. But I also have to question whether this is an issue best decided by the States who are closer to these violations and in a better position to respond swiftly. While it certainly is important that families not fall victim to unfair or deceptive acts related to funeral services, it is also important that we examine any detrimental consequences of Federal legislation that may impede on the ability of State and local governments' ability to decide what is best to protect their local citizens. I look forward to hearing from our witnesses today as they share their thoughts on what actions should take place or be taken by Federal, State and local authorities to address this problem.

Thank you, Mr. Chairman, and I yield back.

Mr. RUSH. The chair now recognizes the gentleman from Georgia, Mr. Barrow, for 2 minutes.

Mr. BARROW. Thank you, Mr. Chairman. I waive.

Mr. RUSH. The chair thanks the gentleman.

And now it is my privilege and honor to introduce the panelists who have taken time off from their busy schedules to appear before this subcommittee and the chair wants the panelists to know how much we appreciate the fact that you have taken time out to be a part of this process. I want to begin to introduce you. From my left there is Mr. Chuck Harwood. He is a deputy director of the Bureau of Consumer Protection for the Federal Trade Commission. Mr. Harwood, welcome.

Seated next to Mr. Harwood is Judge Patricia Brown Holmes, who has been previously mentioned. She is from Illinois. She is the chairman or the chairperson of the Illinois Cemetery Oversight Task Force. She is also a partner with the Schiff Hardin Law Firm and as was indicated, her work resulted in the Illinois governor signing a piece of legislation earlier this month, and I really want to congratulate you and your committee and the outstanding work that you have done for the citizens of the State of Illinois.

Seated next to Judge Holmes is Mr. Paul M. Elvig. He is the former president of the International Cemetery, Cremation and Funeral Association, and seated next to Mr. Elvig is Mr. Randall L. Earl who was also mentioned previously. He comes from the State of Illinois and he is the treasurer of the National Funeral Directors Association and he is the owner of the funeral home, Brintlinger and Earl Funeral Homes, in Decatur, Illinois.

Again, I want to welcome you and it is the customary practice of this committee that you be sworn in. Would you please stand and raise your right hand.

[Witnesses sworn.]

Mr. RUSH. Let the record indicate that the witnesses have all answered in the affirmative.

And now we will ask that you present this committee with your opening statements and you are recognized for 5 minutes for that purpose, and I will start with Mr. Harwood. You are recognized for 5 minutes for the purposes of opening statements.

**TESTIMONY OF CHUCK HARWOOD, DEPUTY DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION; THE HONORABLE PATRICIA BROWN HOLMES (RET.), CHAIR, ILLINOIS CEMETERY OVERSIGHT TASK FORCE, PARTNER, SCHIFF HARDIN LLP; PAUL M. ELVIG, FORMER PRESIDENT, INTERNATIONAL CEMETERY, CREMATION AND FUNERAL ASSOCIATION; AND RANDALL L. EARL, TREASURER, NATIONAL FUNERAL DIRECTORS ASSOCIATION, OWNER, BRINTLINGER AND EARL FUNERAL HOMES**

**TESTIMONY OF CHUCK HARWOOD**

Mr. HARWOOD. Thank you, Mr. Chairman, and members of the subcommittee.

My name is Charles Harwood. I am the deputy director of the Federal Trade Commission's Bureau of Consumer Protection.

The Federal Trade Commission extends our condolences as we did last summer, to the families affected by the awful events at Burr Oak Cemetery. And, Mr. Chairman and members of the subcommittee, we hope your efforts and the efforts of the agencies and organizations in Illinois that have responded to this tragedy have provided some comfort for the many families who are affected by this tragedy.

Given the horrific events that took place at Burr Oak Cemetery which were examined at the subcommittee's hearing last summer which I had the pleasure to attend, we appreciate the opportunity to discuss H.R. 3655. The Commission's formal views were presented in its written submission. My oral statement and responses to any questions are my views and not necessarily the views of the Commission or individual commissioners.

H.R. 3655 seeks to provide more effective consumer protection against fraud and abusive practices in connection with the provision of funeral goods and funeral services. The Federal Trade Commission fully supports these goals and we appreciate the subcommittee's leadership in this area.

The Commission's testimony highlights some important, specific aspects of H.R. 3655. First, the Commission's Funeral Rule currently applies primarily to funeral homes. H.R. 3655 would expand the Commission's jurisdiction in this area to cover not-for-profit entities and specifically cemeteries. Second, H.R. 3655 would apply new disclosure rules to all such cemeteries and also to third-party retailers of funeral goods. Third, in connection with prepaid funeral and burial contracts, H.R. 3655 would require new disclosures of fees and costs among other things. Finally, the bill would give the Commission APA rulemaking authority to promulgate rules to implement the bill's requirements. To that end, H.R. 3655 would direct the Commission to conduct a rulemaking within 1 year of enactment to extend the key consumer protections in the Commission's Funeral Rule to cemeteries, crematories and retailers of caskets, urns, monuments and markers. Because the authority contained in the bill includes non-profit members of the funeral industry, the rule promulgated under the bill would reach the vast majority of cemeteries whether they are for-profit or not-for-profit, including not-for-profit cemeteries owned or operated by religious organizations, States or municipalities. In contrast, the current FTC

Funeral Rule concerns primarily funeral homes which are mostly for-profit entities. It does not reach non-profits.

The Federal Trade Commission Act under which the original Funeral Rule and subsequent Funeral Rule was promulgated, generally excludes not-for-profit companies from the Commission's consumer protection jurisdiction. The proposed expansion of jurisdiction provided by H.R. 3655 would enable the Commission to reach many more members of the funeral industry. This expanded authority coupled with H.R. 3655's new disclosure and record-keeping requirements makes new consumer protection tools available to the FTC and to State enforcers. Finally, as highlighted in the Commission's written testimony, a number of years ago the FTC committed itself to improving compliance with the funerals cost disclosure provisions and during questioning, I would be glad to talk more about that.

But ensuring similar compliance with H.R. 3655 by several thousand newly covered entities will require a commitment of FTC resources. Making available new resources will permit the FTC to continue other consumer protection initiatives while also ensuring that we can effectively implement and enforce the requirements of H.R. 3655.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Harwood follows:]

**Prepared Statement of the Federal Trade Commission**  
**For the Committee on Energy and Commerce**  
**Subcommittee on Commerce, Trade, and Consumer Protection**  
**United States House of Representatives**  
**Washington, D.C.**  
**January 27, 2010**

Mr. Chairman and members of the Subcommittee, I am Charles A. Harwood, Deputy Director of the Federal Trade Commission's Bureau of Consumer Protection. The Commission appreciates this opportunity to provide comments to the Subcommittee on H.R. 3655 and information on the Commission's law enforcement activities regarding the funeral industry.<sup>1</sup>

The Commission remains committed to working with the Subcommittee to identify ways in which the Commission's rulemaking, law enforcement, and outreach experience can be of assistance in considering solutions to the problems highlighted by the horrific events that took place at the historic Burr Oak Cemetery in Alsip, Illinois. In particular, the Commission is grateful to have an opportunity to discuss H.R. 3655, a Bill that would, among other things, give the Commission the authority to regulate cemeteries nationwide.

The Commission commends your leadership in responding to the problems highlighted by the tragic events at Burr Oak Cemetery, as well as the efforts of local and state law enforcement and regulatory authorities in responding to this tragedy. By addressing the problems aggressively, you have clearly signaled the public's resolute unwillingness to tolerate the abusive and appalling behavior that occurred. We are hopeful that your combined efforts have brought some comfort to families with loved ones interred at Burr Oak.

**PROPOSED LEGISLATION: H.R. 3655**

We strongly support the goals of H.R. 3655, which are to provide more effective consumer protection against fraud and abusive practices in connection with the provision of funeral goods and funeral services. H.R. 3655 would direct the Commission to conduct a rulemaking within one year of enactment to extend the key consumer protections in the

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<sup>1</sup> The views expressed in this statement represent the views of the Commission. My oral statement and responses to any questions you may have are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

Commission's Funeral Industry Practices Trade Regulation Rule ("Funeral Rule")<sup>2</sup> – now principally applicable to funeral homes<sup>3</sup> – to cemeteries, crematories and retailers of caskets, urns, monuments, and markers. The Bill would mandate that a final rule require these members of the funeral industry to provide pre-sale price disclosures, prohibit misrepresentations and required purchases, and mandate clear contracts that itemize the goods and services purchased and their prices, just as funeral providers must now do under the Funeral Rule.

H.R. 3655 also would go beyond the current provisions of the Funeral Rule to: (1) mandate that a final rule require all pre-paid funeral contracts to disclose any future fees and costs that purchasers may incur, and any penalties for cancellation or transfer of the contract to another provider; (2) require cemeteries to disclose their written rules and regulations in a timely manner, and provide purchasers with a clear written explanation of the burial rights they have purchased, including any repurchase option by the cemetery and any resale rights available to the consumer; (3) mandate that cemeteries retain all extant burial records and maps, accurately record and retain burial records after the rule takes effect, and make these records available to federal, state and local governments; and (4) authorize states to bring enforcement actions for violations of any of these rules.

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<sup>2</sup> 16 C.F.R. Part 453.

<sup>3</sup> The Rule applies to "funeral providers" who sell or offer both "funeral goods" and "funeral services." 16 C.F.R. §§ 453.1(i); 453.2(a). "Funeral goods" are goods sold or offered in connection with funeral services. 16 C.F.R. § 436.1(h). "Funeral services" are any services that may be used to care for and prepare bodies for burial, cremation or other final disposition and arrange, supervise or conduct the funeral ceremony or other final disposition. 16 C.F.R. § 436.1(j). Thus, both funeral goods and funeral services are offered by funeral homes, but both also may be offered by crematories that sell urns or other goods, and by cemeteries with mortuary facilities on their premises that care for and prepare bodies for final disposition.



This testimony focuses on four aspects of H.R. 3655:

- Expansion of the Commission's jurisdiction to include rulemaking and enforcement responsibilities with respect to non-profits in the funeral industry;
- Application of the proposed law and resulting rule to retailers of caskets, urns, monuments, and markers;
- Proposed new disclosures concerning the portability, refundability, and potential future fees and costs of pre-paid funeral and burial contracts; and
- Authorization to use Administrative Procedures Act rulemaking authority.

First, the rulemaking and enforcement jurisdiction provided for the Commission in H.R. 3655 would, for the first time, include non-profit members of the funeral industry, including most cemeteries. Because the vast majority of cemeteries are organized as non-profits, owned or operated by non-profit religious organizations or states and municipalities, such entities are estimated to outnumber the nation's approximately 7,500 for-profit cemeteries by at least 3 to 1.<sup>4</sup> As you know, the Federal Trade Commission Act generally excludes non-profit companies from the Commission's jurisdiction.<sup>5</sup> Indeed, in the Funeral Rule review proceeding concluded in 2008, the Commission declined to amend the Rule to cover only for-profit cemeteries, in part, because of concerns about likely consumer confusion and the limited benefit of such an effort

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<sup>4</sup> Compare ROBERT G. E. SMITH, *THE DEATH CARE INDUSTRIES IN THE UNITED STATES*, McFarland & Co., Inc., at 23 (1996) (citing estimates of 7,500 commercial cemeteries) with ELIZABETH G. & JAMES D. KOT, *UNITED STATES CEMETERY ADDRESS BOOK 1994 - 95, Indices Publ.* (1996) (providing addresses of "more than 25,000 cemeteries"). A number of states prohibit for-profit cemeteries, including New York, New Jersey, Massachusetts, Wyoming, Connecticut, and Maine. 73 Fed. Reg. 13740, 13744 & n.38 (Mar. 14, 2008).

<sup>5</sup> See 15 U.S.C. § 44.

when a minority of cemeteries would be affected.<sup>6</sup> The proposed substantial expansion of jurisdiction would enable the Commission to reach many more of the key members of the funeral industry. At least 17,000 non-profit entities, the vast majority of which are religious organizations or states and municipalities, would be subject to new disclosure and record-keeping requirements and the attendant costs of compliance.<sup>7</sup>

Second, retailers of caskets, urns, monuments, and markers would be covered by the additional rules mandated by H.R. 3655. These retailers would be subject to pre-sale price disclosure and itemized contract requirements as well as the prohibition on misrepresentations

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<sup>6</sup> Fed. Reg. at 13745 (noting that “[t]here would be confusion among the general public as to what type of information they could expect to receive and what rights they have to purchase goods from third parties. To the extent additional requirements are intended to allow consumers to compare costs among cemeteries, the inconsistent application of the Rule to some cemeteries and not others could make such comparisons impossible or impractical.”)

The Commission also cited a lack of evidence that commercial cemeteries are engaged in widespread unfair or deceptive practices that injure consumers, as required by the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 57a(b)(3), as a basis for its determination not to proceed with a notice of proposed rulemaking. *Id.*

<sup>7</sup> We also note that applying such requirements to religious organizations requires a careful analysis of the need for such requirements and consideration of possible less burdensome alternatives, and could lead to challenges under the First Amendment.

required in the final rule.<sup>8</sup> The application of the mandated disclosure requirements should provide benefits for consumers, but they will entail additional costs for these retailers.

Third, H.R. 3655 contemplates an expansion of the protections provided by the Funeral Rule for purchasers of pre-need funeral arrangements,<sup>9</sup> requiring contractual disclosures of any additional fees or costs that may be incurred in the future and any penalties for cancellation or transfer of the contract.<sup>10</sup> These additional disclosures represent a means to alert consumers who wish to pre-plan their funeral arrangements to issues involved with prepayment and should provide tangible benefits to them.<sup>11</sup> Such contractual disclosures would supplement requirements for clear, conspicuous, and accurate disclosure of material terms – including costs

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<sup>8</sup> The Commission considered a similar proposal during the rule review to expand the Funeral Rule's price disclosure requirements to retail sellers of funeral goods, such as caskets and monuments, that was suggested to "level the playing field" for consumers. 73 Fed. Reg. at 13745. At that time, the Commission declined to amend the Rule for that purpose after finding insufficient evidence to support a reasonable belief "that third-party sellers of funeral goods are engaged in widespread unfair or deceptive acts or practices" as required under the FTC's rulemaking procedures mandated by the Magnuson-Moss amendments to the FTC Act, and noting that "third-party retailers have a strong economic incentive to display their prices to the public at large because offering a lower price is the primary way they compete against funeral providers for sales of funeral goods, such as caskets." 73 Fed. Reg. at 13745.

<sup>9</sup> Although the Rule does not separately address pre-need arrangements, its price disclosure and other requirements apply equally to pre-need and at-need arrangements. 16 C.F.R. § 453.2; *see also, e.g.*, 73 Fed. Reg. at 13751.

<sup>10</sup> These two disclosures were suggested during the rule review, but the record contained insufficient evidence that abusive practices were prevalent in the sale of pre-need contracts to support initiation of an amendment proceeding, as required by the FTC's Magnuson-Moss rulemaking authority. 73 Fed. Reg. at 13750-51.

<sup>11</sup> Some have expressed concern about loss or theft of pre-paid consumer funds and the adequacy of state laws regulating pre-paid contracts. H.R. 3655 does not address these issues directly, but the Bill's additional disclosures may provide benefits to consumers.

– at the outset when pre-need arrangements are made, which is currently required under the Funeral Rule.

Fourth, H.R. 3655 directs the Commission to conduct a rulemaking within one year of enactment to extend the key consumer protections in Funeral Rule to cemeteries, crematories and retailers of caskets, urns, monuments, and markers. Under the cumbersome FTC Act rulemaking procedures,<sup>12</sup> promulgation of such a rule would likely be a time consuming effort and would require a finding that the practices addressed are “prevalent.”<sup>13</sup> The Bill authorizes the use of Administrative Procedures Act rulemaking authority, which should permit the Commission to meet the rule promulgation deadline in H.R. 3655.<sup>14</sup>

The Commission appreciates the Subcommittee’s request for comments concerning H.R. 3655 and welcomes the opportunity to work further with Subcommittee staff regarding the proposed legislation.

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<sup>12</sup> Section 18 of the FTC Act, 15 U.S.C. § 57a, empowers the FTC to “prescribe rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce . . .”

<sup>13</sup> In rulemaking under Section 18, the Commission may not issue a notice of proposed rulemaking unless it has “reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.” 15 U.S.C. § 57a(b)(3). The Commission may find prevalence where available information “indicates a widespread pattern of unfair or deceptive acts or practices.” 15 U.S.C. § 57a(b)(3)(B).

<sup>14</sup> FTC rulemakings pursuant to Magnuson-Moss procedures typically have required from three to ten years to complete. For example, the proceeding to promulgate the FTC’s Credit Practices Rule, 16 C.F.R. Part 444, using Magnuson-Moss procedures took almost ten years. In contrast, the proceeding to promulgate the FTC’s Telemarketing Sales Rule, 16 C.F.R. Part 310, using APA procedures took one year.

**ENFORCEMENT**

In developing H.R. 3655, the Subcommittee is seeking to increase consumer protection in connection with the provision of funeral goods and funeral services by expanding coverage to cemeteries and third-party sellers of funeral goods. As both the Subcommittee and the Commission consider how to go forward in this area, the Commission's experience promulgating and enforcing the Funeral Rule is relevant and instructive.

In the first ten years following promulgation of the Funeral Rule, compliance with the cost disclosure provisions was very low – by one estimate only 25% of funeral providers complied.<sup>15</sup> In an effort to improve compliance, the Commission in 1994 initiated annual enforcement Funeral Rule “sweeps” of funeral homes around the country. The sweeps involve staff from the Commission's regional offices, who, posing as consumers, visit all the funeral homes in a particular urban or rural geographic area to determine whether they are in compliance with the Rule's core disclosure requirements.<sup>16</sup> Working in cooperation with the National Funeral Directors Association (“NFDA”), the Commission allows first-time offenders to make a

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<sup>15</sup> The Funeral Rule was promulgated in 1984. A Commission-sponsored 1987 study and a 1988 study conducted by the Gallup organization for AARP indicated that at that time funeral providers' compliance with the Rule's core requirement – *i.e.* to give consumers an itemized general price list at the beginning of the arrangements discussion – may have been as low as 23 percent. See *Federal Trade Commission Bureau of Economics Staff Report – An Analysis of the Funeral Rule Using Consumer Survey Data on the Purchase of Funeral Goods and Services* (Feb. 1989) at 20.

<sup>16</sup> To implement the sweeps, staff members from the Commission's regional offices plan and coordinate each annual sweep and identify the funeral homes in the targeted geographic area. Typically, between two and four staff members conduct the initial sweep, and after a preliminary evaluation of the results, they may return for follow-up test shops. The staff members coordinating the project then review and evaluate the reports of the test shops and the price lists obtained. Staff members prepare letters notifying violators of the violations that were identified, communicate what options the funeral provider has, and follow-up to obtain the information needed to determine the amount of the FROP payment and to enroll the violator in FROP.

voluntary payment to the U.S. Treasury and enter into a training, testing, and monitoring program known as the Funeral Rule Offenders Program (“FROP”). When two separate test-shops show that a funeral provider is violating core Rule requirements, the Commission gives the provider the choice of participating in FROP, or undergoing a conventional investigation and potential law enforcement action resulting in a federal court order and payment of a civil penalty.<sup>17</sup> As a result of these annual sweeps, compliance has risen significantly from what it was prior to 1994.<sup>18</sup> Of course, such efforts necessarily entail enforcement costs and decisions about enforcement priorities.

As the history of the Funeral Rule demonstrates, an active enforcement program will be essential to secure a reasonable level of compliance with any new requirements. Implementing a robust program to enforce such new requirements against several thousand new entities likely will require additional resources or the diversion of current resources away from other important consumer protection missions. Like all government agencies, the Commission understands that resources are scarce and must be used as efficiently as possible. However, increased resources would help us meet the demands of providing more extensive protection for consumers and would help the Commission effectively implement and enforce the requirements of H.R. 3655.

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<sup>17</sup> When two separate sweep test shops show that a funeral provider is violating core Rule requirements, the Commission gives the provider, whether or not a member of NFDA, the choice of a conventional investigation and potential law enforcement action resulting in a federal court order and payment of a civil penalty, or participation in FROP. Funeral providers that enroll in FROP make payments to the U.S. Department of Treasury equal to 0.8% of their average annual gross sales over the prior three years. The NFDA collects a fee from FROP participants for administering the program, maintains records on funeral homes that are enrolled in the FROP program and makes these available for review by Commission staff.

<sup>18</sup> The overall compliance rate is now better than 85 percent. Since the sweeps program began, Commission staff have shopped more than 2200 funeral homes, and referred more than 300 to the FROP program.

**CONCLUSION**

The Commission appreciates the Subcommittee's interest in enhancing consumer protections in the funeral industry, and wishes to thank the Subcommittee for this opportunity to comment on H.R. 3655. As discussed, the proposed legislation, including its expansion of the Commission's jurisdiction, could entail compliance and enforcement costs and challenges, but it could also provide meaningful benefits to consumers.

Mr. RUSH. The chair now recognizes Judge Brown Holmes and Judge, you are recognized for 5 minutes for the purposes of opening statements.

#### **TESTIMONY OF PATRICIA BROWN HOLMES**

Ms. HOLMES. Thank you, Mr. Chairman and members of the subcommittee, for the opportunity to be here today to testify about the findings and recommendations of the Illinois Cemetery Oversight Task Force. I am Retired Judge Patricia Brown Holmes, the chairperson of that task force, and I appear here today in my capacity as a private citizen because the task force is no longer in effect because the legislation was passed.

Mr. Chairman, all of us expect that our loved ones will be treated with the same dignity and respect in death as in life and many of us believe that the protection of those rights is a duty and a responsibility that is properly entrusted to our Government. That is why the citizens of the State of Illinois were shocked in July, 2009, when we learned of the horrific events taking place in historic Burr Oak Cemetery in Alsip, Illinois, a place where Emmett Till, Dinah Washington, and Ezra Charles were buried along with my father.

According to reports that appeared in print and broadcast media, it was alleged that workers at the Burr Oak Cemetery had over a period of several years, unearthed hundreds of corpses and then dumped them in the weeds in the cemetery or double-stacked them in existing graves. The empty burial plots were then allegedly resold to members of the public who had no knowledge that the graves were being reused.

On July 16, in the wake of these appalling reports, Governor Quinn signed an executive order forming the Cemetery Oversight Task Force and appointed me chair along with 11 other blue ribbon panel members. Our task was to examine the circumstances surrounding the Burr Oak Cemetery fiasco and to attempt to conduct a comprehensive review of pertinent Illinois laws and the laws of other States to recommend policies, laws, rules and regulations that should be implemented to ensure the respectful and humane treatment of the deceased, and to essentially recommend legislation to better protect and serve the people of the State of Illinois.

The testimony and evidence presented to our task force during the 2 months of hearings was shocking. It revealed a systemic failure of oversight and regulation of the cemetery industry in our State. The task force concluded that although there were a number of laws in Illinois that did address various aspects of the death care industry, a regulatory disjunction existed with respect to the operation and management of cemeteries. The task force concluded that there was a direct connection between the hodgepodge of regulations governing the death care industry and a lack of regulatory oversight that contributed to the deteriorated condition of Burr Oak Cemetery and other cemeteries, circumstances that allowed the alleged activity to flourish.

With an eye towards assuring that this historic event did not repeat itself, the report issued by our task force on September 15 set forth three primary recommendations. First, we recommended that regulatory authority over the funeral and burial practices be consolidated into one department, in our case, the Department of Fi-



nancial and Professional Regulation which, in Illinois, currently licenses more than one million professionals in nearly 100 industries. Second, our task force recommended that legislation be adopted requiring cemetery management operations to be treated as a profession and that only qualified persons be authorized to own, operate, or work in the cemetery in our State based on our finding that the practice of cemetery management and operation affects the public health safety and wellbeing of our citizens. Third, we recommended that our General Assembly amend and consolidate various statutes for the purpose of first, creating a uniform system of oversight and regulation, second, strengthening the licensing and regulatory requirements in those statutes and third, creating new consumer protections.

With the passage and signing of the Cemetery Oversight Act on January 17, Illinois now has a comprehensive regulatory framework making it a national model for cemetery oversight, establishing new and stricter standards for the care and operation of cemeteries. For example, the Act requires licensure for private, non-religious cemeteries, the creation of a consumer bill of rights protecting consumers purchasing burial merchandise and services, and the establishment of a statewide data base that will help future generations locate the remains of a loved one. The new Act also prohibits cemeteries from requiring cash payment for services and merchandise. It establishes protections for whistleblowers and it creates a cemetery relief fund to assist abandoned and neglected cemeteries. I am very privileged to have participated in the passage of that landmark legislation which is an example of our democratic process at its best.

We look forward to your bill, Mr. Chairman, and hope that it will complement the State's bill and I will answer further questions at the conclusion. Thank you.

[The prepared statement of Ms. Holmes follows:]

**Statement of the Honorable Patricia Brown Holmes (ret.)**  
**Testimony before the House Subcommittee on Commerce, Trade and Consumer Protection**  
**January 27, 2010**

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify about the findings and recommendations of the Cemetery Oversight Task Force, which was established by Governor Pat Quinn in response to reports that hundreds of graves in a cemetery located just outside of Chicago had been desecrated and vandalized.

Mr. Chairman, all of us expect that our loved ones will be treated with the same dignity and respect in death as in life, and many of us believe that the protection of those rights is a duty and responsibility that is properly entrusted to our government. That is why the citizens of the State of Illinois were shocked in July 2009 when we learned of horrific events taking place in the historic Burr Oak Cemetery in the suburb of Alsip, Illinois. According to reports that appeared in the print and broadcast media, it was alleged that workers at the Burr Oak Cemetery had, over a period of several years, unearthed hundreds of corpses and then dumped them in a weeded area in the Cemetery or double-stacked them in existing graves. The empty burial plots were then allegedly resold to members of the public who had no knowledge that the graves were being reused.

On July 16, 2009, in the wake of these appalling reports, Governor Pat Quinn signed an Executive Order forming the Cemetery Oversight Task Force. Governor Quinn ordered the 11 citizens comprising the Task Force to examine the circumstances surrounding the events at Burr Oak Cemetery; to conduct a comprehensive review of pertinent Illinois laws and the laws of other states; and to recommend what policies, laws, rules, and regulations should be implemented to ensure the respectful and humane treatment of the deceased. The essential purpose of the Task Force was to recommend legislation to better protect and serve the people of the State of Illinois.

I was honored to accept Governor Quinn's request that I chair the Task Force, but found it a particularly daunting challenge since both my father and brother are buried in the Burr Oak Cemetery. My first thoughts were: "How could this be? Who would dare disturb the dead? Wasn't anyone watching?" The Task Force set out to answer these questions, address the deficiencies in the State's mechanisms for regulating and overseeing the operation and management of cemeteries, and propose solutions to ensure the proper treatment of the deceased and their bereaved family members.

The testimony and evidence presented to the Task Force during two months of hearings revealed a systemic failure of oversight and regulation of the cemetery industry in the State of Illinois. The Task Force concluded that although there are a number of laws in Illinois that address various aspects of the death care industry, a regulatory disjunction exists with respect to the operation and management of cemeteries. The Task Force concluded that there was a direct connection between the hodgepodge of regulations governing the death care industry and the deteriorated condition of Burr Oak Cemetery and other cemeteries. The Task Force also

concluded that the lack of regulatory oversight was likely a contributing factor to the criminal scheme that allegedly unfolded at Burr Oak Cemetery. It was the primary finding of the Task Force that without legislative reform and increased oversight of cemetery operations, the events that occurred at Burr Oak Cemetery and other cemeteries in the State of Illinois would continue to occur, and the same types of tragic stories the public has already heard too many times would continue to be told.

With an eye towards ensuring that this history does *not* repeat itself, the report issued by the Task Force on September 15, 2009 set forth three primary recommendations. First, the Task Force recommended that regulatory authority over funeral and burial practices be consolidated into the Department of Financial and Professional Regulation (the "Department"), which currently licenses more than one million professionals in nearly one hundred industries. Under existing law, Illinois' regulation of the death care industry is currently divided between two state agencies. The Department has jurisdiction over funeral directors and embalmers, while the Comptroller has jurisdiction over most other aspects of the for-profit death care industry, including laws relating to pre-need cemetery and funeral purchases, cemetery care funds, the protection of cemetery property, cemetery associations, and crematories. The Task Force found that this segmentation of duties and responsibilities is confusing to the consumer of cemetery and funeral products and services, and thwarts the uniform and effective application of laws and regulations. The Task Force noted that the Department has the highest level of expertise with respect to the licensure and regulation of occupations, and therefore determined that a uniform system of oversight and regulation should be established under the jurisdiction of the Department.

Second, the Task Force recommended that the General Assembly consider the adoption of new legislation – a Cemetery Oversight Act – providing for the licensure of cemetery managers and the registration of cemetery employees. The Task Force found that the practice of cemetery management and operation in the State of Illinois affects the public health, safety, and well-being of its citizens, and should be subject to regulation and control in the public interest. Accordingly, it recommended that legislation be adopted requiring that cemetery management operations be treated as a profession and that only qualified persons be authorized to own, operate, or work in a cemetery in the State of Illinois.

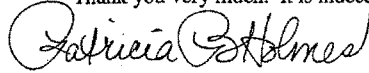
Third, the Task Force recommended that the General Assembly amend and consolidate various statutes for the purpose of: (1) bringing them under the jurisdiction of the Department and creating a uniform system of oversight and regulation; (2) strengthening the licensing and regulatory requirements in those statutes; and (3) creating new consumer protections. (A copy of the Report of the Task Force may be found at [cemeterytaskforce.illinois.gov](http://cemeterytaskforce.illinois.gov).)

In its final report to the Governor, the Task Force proposed a comprehensive regulatory framework that would, if implemented, make Illinois a national model for cemetery oversight. With the passage and signing of the Cemetery Oversight Act on January 17, 2010, that day has arrived. The legislation that Governor Quinn signed into law less than two weeks ago is based on the recommendations of the Task Force, and establishes new and stricter standards for the care and operation of cemeteries. As recommended by the Task Force, the new Act consolidates the regulation of funeral and burial practices into one agency: the Department of Financial and Professional Regulation. The Cemetery Oversight Act also implements the other reforms

recommended by the Task Force, including the imposition of licensure requirements for private, non-religious cemeteries; the creation of a consumer bill of rights which sets forth protections for consumers purchasing burial merchandise and entering into burial contracts; and the establishment of a statewide database that will help future generations locate the remains of a loved one. The new Act also prohibits cemeteries from requiring that consumers pay for services and merchandise in cash; establishes protections for whistleblowers who make good faith reports about misconduct at a cemetery; and creates a Cemetery Relief Fund to assist cemeteries that have been abandoned or neglected.

I feel very privileged to have participated in the passage of this landmark legislation, which is an example of the democratic process at its best. As a result of the vision and leadership of Governor Quinn and the hard work, commitment, and skill of the members of the Illinois General Assembly, this legislation will help protect the memories of our grandparents and parents, brothers and sisters, role models and heroes – all of those closest to us. They deserve it, and the Cemetery Oversight Act demands it. It is my strong belief that this Act will help ensure that a tragedy of the magnitude that occurred at the Burr Oak Cemetery does not happen again in the State of Illinois.

Thank you very much. It is indeed an honor to have appeared before you.



Hon. Patricia Brown Holmes (ret.)

Ms. SCHAKOWSKY [presiding]. Thank you.  
Mr. Elvig.

#### TESTIMONY OF PAUL M. ELVIG

Mr. ELVIG. My name is Paul Elvig and I am with the International Cemetery Cremation and Funeral Association. I am also past president of the National Cemetery Regulators Association many years ago.

I would like to thank the chairman, the vice chair and all members of this committee for the interest you have taken, keen interest you have taken in what is no doubt one of the most outrageous acts most of us have heard in our lifetime. I have been around this business, if you will call it that, for the last 40 years and as a regulator I have looked into consumer complaints from misspelled markers on tombstones to the sexual molestation of the dead by a very sick person. I share that to show you that there are many, many aspects of potential crime, if you will, against the dead.

Our association, the ICCFA is proud to call ourselves the guardian of Americans' heritage. We think your interest is showing your interest in being a guardian of our heritage in this country. We are concerned and we don't oppose this bill. We support the concepts but we certainly are concerned about unintended consequences and that is obviously something we always have to look at when we talk about new legislation. There are thousands upon thousands of cemeteries in this country that are run by volunteer organizations, church organizations, community clubs, grange halls, you name it, that are running on frankly just nickels and dimes and donations. And as we would look at possibly imposing upon those cemeteries the guidelines, for example, that the FTC presently has for funeral homes, we are talking about increased cost of operation that could very well bankrupt already a very shoestring industry if you want to call it that.

Our state regulator in Washington State just shared with several of us on our legislative committee that he has had a cemetery come into his office, one of these ones I mentioned, and put the keys on his table and say we are through. We can't run this cemetery. Who does? And so we would urge that as we would look at legislation, as we would look at regulation, we be certain that we not break the backs of many organizations who have already been hurt by the cremation increase in this country and who are seeing their revenue sources literally dry up. That is a major concern to us.

We have enjoyed in the past working with the FTC and have participated in hearings and have offered our evidence but one thing I want to mention under the FOIA request we made with the FTC, we found that there were 1.2 million complaints filed with them on every subject from computer network fraud to you name it. But out of that there were only 241 complaints, that is out of 1.2 million, there were 241 complaints about funeral homes and cemeteries and the cemeteries represented even a small fraction of that. That was less than two tenths of one percent and so as we look to correct problems, we ask that we keep that perspective in mind as to how broad are these problems.

Now, having served as the president of the National Cemetery Regulators, I have had the privilege of reviewing State law and it

varies considerably. It varies by the State. It varies by the issues a State's faced whether it be a cemetery that is situated in a desert scene where there is not normal dirt to make burial, to cemeteries in Hawaii, to cemeteries in Vermont that have hundreds of years of history. And so having reviewed State law nationwide, I want to say that what we are seeing in State statute is custom statute to fit a custom situation. So when we do hear about scandals that happened right in your State, right in Illinois, the outrage there, these folks went to work and they did their job. They introduced State legislation to address that issue in that particular community under those particular circumstances and so we strongly favor the concept that States ought to continue in their role of regulating and we certainly don't want to see States read into any action from this committee as saying it has all been handled. That is a concern. It really is a concern. Having been a bureaucrat and in State government, I know how easy it is to say somebody else is handling the problem.

I want to conclude by saying this—that there is something not mentioned in this bill that I would beg you to consider and that would be to federally criminalize the illegal disruption of a human dead body that has been buried or brought to a crematory. That is such an outrage there ought to be a Federal law against it. There is when we look at veterans cemeteries. We have veterans buried in non-veteran cemeteries who aren't protected that way and so I would urge that as you refine this bill that you look at criminalizing and putting away these, I won't use words I want to call them, those who would disturb the dead that are lying in peace. We can't let that outrage exist and I ask your help in that.

Thank you so much.

[The prepared statement of Mr. Elvig follows:]



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Testimony by

Paul M. Elvig

On Behalf Of

International Cemetery, Cremation and Funeral Association

At the Public Hearing on

H.R. 3655, the Bereaved Consumers Bill of Rights

Before the Committee on Energy and Commerce

Subcommittee on Commerce, Trade and Consumer Protection

United States House of Representatives

Washington, D.C.

January 27, 2010

GUARDIANS OF A NATION'S HERITAGE

Chairman Rush and Members of the Subcommittee:

We appreciate this opportunity to testify at this morning's hearing concerning H.R. 3655, the Bereaved Consumers Bill of Rights Act. Our testimony supplements comments we submitted this past August in conjunction with the Subcommittee's field hearing on cemetery oversight conducted in Chicago on July 27, 2009. We respectfully request that our testimony be made part of the permanent hearing record. The International Cemetery, Cremation and Funeral Association (ICCFA) was founded in 1887 and represents approximately 7,300 industry members including nonprofit, for-profit, religious and municipal cemeteries, funeral homes, crematories, monument retailers, and related professions including architects, attorneys and accountants. The ICCFA is the only trade association representing all segments of the death care industry.

The members of the ICCFA have been shocked and dismayed over the reports of illegal disinterments, mishandling of human remains, and the fraudulent reselling of burial spaces at the historic Burr Oak Cemetery in Alsip, IL, and we applaud your leadership for investigating the issues involved and sponsoring H.R. 3655. To place the Burr Oak atrocity into perspective, the bill makes reference to two other incidents of the desecration of graves and the mishandling of remains elsewhere in the United States. However, we note that in each case, Florida, Georgia, and of course Illinois, the state and local authorities responded quickly and decisively, and new laws were enacted to address these heretofore unprecedented situations. We think it fair to ask what role, if any, the federal government could have or should have played when state and local authorities had the situation well in hand.



The ICCFA supports the concepts and disclosures contained in Section 3 of H.R. 3655 as good businesses practices. In fact, these rules to prohibit unfair or deceptive acts and practices reflect the very same standards contained in the ICCFA Model Guidelines that were published over a decade ago and can be accessed on our website at [www.iccfa.com](http://www.iccfa.com). The twenty-eight Model Guidelines for State Law and Regulations include topics on disinterments, recordkeeping, trust funds, prepaid contracts, written price disclosures, and many other aspects of cemetery, mortuary, and crematory operation.

There is no question that the most abhorrent aspect of the Burr Oak investigation was the allegedly unauthorized and illegal defiling of graves. We strongly recommend that illegal disinterments be made a federal crime punishable as felony and respectfully suggest that H.R. 3655 be amended to include this offense. Federal law at 18 U.S.C. Sec. 1369 currently makes the willful injury or destruction or attempts to injure or destroy any veterans' memorial on public property, i.e., a national cemetery, a federal crime punishable by fine or imprisonment of not more than ten years, or both. The ICCFA recommends that this statute be amended to include veterans' memorials on private property, and all cemetery memorials and monuments whether commemorating veterans or non-veterans.

Section 5 of H.R. 3655 states that its provisions shall not preempt state law "that provides protections to consumers of funeral services or funeral goods, except to the extent that the provision of law is inconsistent with any provision of this Act or a rule

prescribed under this Act....” However, we note that a number of states maintain laws that restrict or prohibit certain retailers from selling funeral and cemetery merchandise. The ICCFA urges the Subcommittee to amend H.R. 3655 to preempt any state law that does not allow all retailers to sell funeral and cemetery merchandise to the public.

Section 3 of H.R. 3655 requires the Federal Trade Commission to enact a trade regulation that would cover all sellers of either funeral goods or funeral services, including nonprofit and religious cemeteries. Typically, under an FTC trade rule, we understand that violations are statutorily imposed at the rate of \$11,000 per violation. Frankly, this amount could bankrupt a number of smaller cemeteries that operate with volunteer staffs and possibly one or two paid employees. We suggest that a more constructive approach to regulating good business practices is by developing FTC Funeral Guides, which could then be enforced through Section 5 of the FTC Act. The advantage of this approach would also track patterns of misconduct by a business as determined by the Guides, rather than imposing fines for isolated, one-event “gotcha” shortcomings that sometimes are the approach to trade rule enforcement. In its present form, H.R. 3655 would impose excessive penalties for some relatively minor omissions of disclosure in a manner suggesting that the punishment outweighs the offense. We urge the Subcommittee to reconsider the structure of requiring disclosures, and the penalties that would be imposed under this bill.

We are also concerned that the section 3(c) application to tax exempt organizations, including religious entities, raises both constitutional and jurisdictional

issues. The FTC Act limits the Commission's jurisdiction to businesses that are carried on for profit, and the FTC historically has not attempted to regulate religious organizations or their activities. Given the fact that the overwhelming majority of cemeteries in the United States are nonprofit, including religious, municipal, and fraternal organizations, we believe that H.R. 3655 would have a disproportionate impact on these entities in ways that would never pass a cost/benefits analysis. In addition, the punitive enforcement of a trade rule mandated by H.R. 3655 would have a disproportionate effect on small business, which comprise the majority of funeral homes and cemeteries in the United States.

The ICCFA believes that cemeteries and funeral homes are most efficiently and effectively regulated at the state level. These entities operate locally in their communities and therefore it makes sense to hold them accountable locally. During this Subcommittee's Chicago field hearing in July, we understand that one witness suggested that there may only be ten states with cemetery laws. That is not at all accurate. All fifty states have cemetery laws and regulations although some are more comprehensive than others. To assist the Subcommittee in its research, we are pleased to provide the following link to our website (<http://www.iccfa.com/files/StateLawsandRegulations2009.doc>) for a listing of all state cemetery and funeral home laws and regulations, which printed out, the list alone totals nearly 300 pages. There are also hyperlinks within the document to read the actual statutes and regulations. We have previously provided the Subcommittee staff with this data.

On the federal level, there is no law that specifically governs cemetery and funeral home operations. However, these entities must comply with literally dozens of federal statutes and regulations that affect their operations from the Departments of Labor, Treasury, Justice, Veterans Affairs, the Environmental Protection Agency, the Equal Employment Opportunity Commission, the Federal Communications Commission, the Federal Trade Commission, even the Federal Reserve Board. A listing of many of the agencies and their regulations is attached with hyperlinks. As noted, it is important to recognize that Section 5 of the FTC Act already gives the Commission regulatory authority over businesses engaging in unfair or deceptive practices, which would include cemeteries, funeral homes, crematories, and all related businesses in the funeral services industry.

We respectfully suggest that federal regulations already address most aspects of cemetery and funeral home operations including deceptive sales and marketing practices. At the state level, the new Illinois Cemetery Oversight Act resulting from the Burr Oak investigation provides a case in point at the speed in which local authorities can move when confronted with a serious funeral-related issue. Existing state laws are being used to charge the four individuals apprehended in the Burr Oak investigation with serious crimes, and these defendants are facing multiple counts involving substantial criminal penalties if convicted, including incarceration.

For these reasons, we respectfully suggest that H.R. 3655 should not be critiqued as “a solution in search of a problem,” but should be reconsidered with an understanding

of the interaction between existing state and federal law enforcement as discussed above. The ICCFA looks forward to working with the Subcommittee and its staff to ensure that cemeteries, funeral homes, and crematories are held accountable and will always be regarded as “Guardians of a Nation’s Heritage.” Thank you.

Respectfully submitted,

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Paul M. Elvig

Attachments

- 1.) ICCFA Model Guideline: “Disinterment”
- 2.) ICCFA Model Guideline: “Record Keeping Requirements”
- 3.) ICCFA Model Guideline: “Identification of Human Remains in Conjunction with Final Disposition”
- 4.) ICCFA Model Guideline: “Prepaid Contracts”
- 5.) ICCFA Model Guideline: “Written Price Disclosures Prior to Purchasing”
- 6.) List of Federal Regulations Affecting Cemeteries and Funeral Homes
- 7.) Curriculum Vitae of Paul M. Elvig
- 8.) Signed Witness Disclosure Requirement – “Truth in Testimony”

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#### Model Guidelines for State Laws and Regulations

These guidelines are advisory in nature and set out general concepts rather than precise statutory language. The ICCFA is not recommending that the guidelines be codified into law as a whole. Instead, the guidelines are intended for consideration as a series of options to be selectively chosen by interested parties to address particular concerns.

#### Disinterment

*Developed in 1998 by the Government and Legal Affairs Task Force of the International Cemetery and Funeral Association*

#### BACKGROUND

General policy of law does not favor disinterment, absent compelling reasons. However, a cemetery authority may occasionally receive a request for interred human remains to be disinterred and reinterred within the cemetery or removed from the cemetery. Before the cemetery authority proceeds to honor a disinterment request, it should be assured that all required parties have provided authorization or that disinterment has been ordered by the court.

Disinterment procedures should protect the wishes and intent of the decedent and the respective interests of interment right owners, the next of kin of the decedent, cemetery authorities, and the general public. A cemetery authority should establish procedures to protect the health and safety of those involved in the disinterment process.

#### PRINCIPLES

1. Human remains interred in a cemetery may be disinterred, reinterred, or removed from the cemetery with the permission of the cemetery authority and written consent from the interment right owner or successor-in-interest and the person(s) who are lawfully authorized to control the final disposition of the human remains, hereinafter referred to as the "authorizing agent."
2. The statutory order of priority to control final disposition should apply to disinterment. The individual(s) with the highest order or priority would serve as the authorizing agent(s) for the disinterment. If there is more than one individual in the same degree of kindred, then all adult parties having the same degree of kindred should consent to the disinterment.
3. The order of priority for an authorizing agent could be as follows:
  - a. The person who was designated by the decedent prior to death as the authorizing agent to control final disposition;
  - b. The surviving spouse;
  - c. The decedent's surviving children 18 years of age or older;
  - d. The decedent's surviving parents;
  - e. The decedent's surviving siblings 18 years of age or older.
4. Prior to performing a disinterment, a cemetery authority should have received authorization for final disposition of the disinterred human remains.
5. The person(s) requesting and authorizing a disinterment should assume financial responsibility for any fees charged by the cemetery authority for performing a disinterment and for any resulting repair or replacement of merchandise that is damaged during the process.
6. The cemetery authority should be held harmless against subsequent claims for decomposition of interred human remains or deterioration of the casket, outer burial container, or other merchandise. A lawful disinterment should not be considered desecration of the interment or of the human remains.
7. The cemetery authority should be held harmless when acting in good faith in connection with the authorized disinterment when relying upon the disclosures and instructions provided by the interment right owner and the authorizing agent.
8. Where a dispute exists among any of the interested parties, a cemetery authority should not be held liable for refusing to disinter the human remains until it receives a court order or other formal notification signed by each of the disputing parties that the dispute has been resolved or settled.

9. If consent to disinter cannot be obtained, the human remains may be disinterred by order of the court having jurisdiction where the cemetery is located.
10. Consent for disinterment should not be required under the following circumstances:
  - a. Disinterment and reinterment by the cemetery authority within the cemetery to correct an error;
  - b. Relocation of human remains from a temporary storage area to a place of permanent interment within the cemetery;
  - c. Repositioning of an outer burial container that encroaches an adjoining grave space.
11. Consent for each disinterment and reinterment should be obtained when raising and lowering human remains to accommodate multiple interments within a single interment space.
12. A cemetery authority, or person designated by the cemetery authority, should be responsible for performing any disinterment or reinterment in the cemetery it owns due to the cemetery authority's care and maintenance obligation.
13. Permanent records should be kept by the cemetery authority concerning any disinterment, reinterment, or removal from the cemetery.
14. If a cemetery authority needs to take action to correct any errors that might be made in making an interment, disinterment, or reinterment in an incorrect location, the cemetery authority should have the right to transfer the human remains to the correct location or to a similar location of comparable value, as might be selected by the cemetery authority. The cemetery authority should have no liability as a result of any error of this type, other than the obligation to correct it.
15. The cemetery authority should be allowed to adopt reasonable rules and regulations for procedures relating to disinterment and reinterment providing that such rules and regulations conform with relevant statutes.

Model Guidelines authorizing agent cemetery authority disinterment human remains [Login or register to post comments](#)

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#### Model Guidelines for State Laws and Regulations

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#### Record Keeping Requirements

*Developed in 1998 by the Government and Legal Affairs Task Force of the International Cemetery and Funeral Association*

#### BACKGROUND

The necessity to retain documentation relating to funeral and final disposition transactions will vary according to the type of facility, the nature of the transaction, and the type of information involved. For example, cemeteries open with the intent of lasting forever. Accordingly, permanent records should be retained for interment spaces and interments performed. Records of interment right ownership and final disposition should also be kept permanently, as should those records relating to the cremation process. However, records relating to at need funeral arrangements, prepaid contracts, or prepaid contract trust fund activities need only be retained for a limited time period following performance or termination.

This guideline is limited to record keeping considerations arising from funeral service and cemetery transactions specifically related to contracts and final disposition.

#### PRINCIPLES

1. Permanent records should be kept for:
  - a. Each interment space sold, including information such as the specific location, interment right ownership, and the endowment care trust fund contribution;
  - b. Instructions for final disposition of human remains;
  - c. Authorizations for cremations;
  - d. Each interment performed; and
  - e. Data on each memorial installed in the cemetery.
2. In the case of a transfer of interment rights between owners, information should be retained permanently pertaining to such transfer.
3. Copies of all prepaid contracts and a record of prepaid contract trust fund deposits and withdrawals should be retained for a specified time period following performance or termination of the prepaid contract.
4. At need contracts should be retained for a specified time period following performance.
5. Records may be kept on paper or in a machine-readable form including, but not limited to, computer disks, magnetic tape, microfilm, microfiche, or digital imaging.
6. The regulatory authority should have reasonable access to examine required records to determine compliance. Records should be maintained in a secure location, which may be separate from the selling location, provided that the regulatory authority is notified of such location.
7. Information that the regulatory authority receives from examinations including, but not limited to, financial, accounting, and transactional records, should be kept confidential, except as required in a legal proceeding.
8. The cemetery authority, crematory authority, direct disposer, funeral establishment, or similar business should be allowed to adopt reasonable rules and regulations for record content and retention, providing that such rules and regulations conform with relevant statutes.
9. The cemetery authority, crematory authority, direct disposer, funeral establishment, or similar business should not be held liable for relying upon erroneous information that has been provided to them by third parties.

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#### Handling of Human Remains In Conjunction With Final Disposition

*Developed in 1998 by the Government and Legal Affairs Task Force of the International Cemetery and Funeral Association*

#### BACKGROUND

All aspects of the final disposition of human remains should be handled with dignity, observing standards of decency, and in accordance with applicable laws.

Final disposition can be in the form of burial, entombment, inurnment, burial at sea, scattering, dispersion into space, shipment, or delivery of cremated remains to a designated person. The steps included in the preparation process for final disposition include, but are not limited to, removal, autopsy, embalming, cleansing, dressing, viewing, visitation, ceremony, cremation, and the selection of merchandise, services, and interment rights. The care and preparation of human remains is a process where, due to issues of privacy, respect, and safety, access during certain procedures should be limited to authorized individuals, and on occasion, immediate family members of the deceased.

At all times, human remains should be treated with dignity. Intentional misconduct in handling the human remains should not be tolerated. Accordingly, penalties for such actions should be sufficiently severe to discourage the activity and punish those who engage in it.

#### PRINCIPLES

- 1.) Upon taking custody of the human remains, the entity in charge of the final disposition should verify that the container which encases the human remains bears identification of the deceased and is accompanied by the proper documentation.
- 2.) The cemetery authority, crematory authority, direct disposer, funeral establishment, or related businesses should be held harmless in connection with the authorized final disposition, when relying upon the identification and disclosures provided by the authorizing agent and acting in good faith upon the instructions of the authorizing agent.
- 3.) If there is a delay in the final disposition, human remains that have not been embalmed or cremated should be held in a refrigeration unit until such time as final disposition occurs.
- 4.) In the event that the cremated remains are unclaimed for a stated period of time, the crematory authority should send a letter by registered mail to the authorizing agent. If the cremated remains are unclaimed for a specified period of time after such written notification is mailed, the crematory authority should dispose of unclaimed cremated remains in any proper manner, and be held harmless for this action.
- 5.) The choice of the entity in charge of the final disposition should be left to the authorizing agent of the deceased. It should be considered unethical and illegal conduct to engage in *Asteering@* practices, where the human remains are directed to a specific cemetery authority, crematory authority, direct disposer, funeral establishment, or related businesses for payment of a referral fee.
- 6.) Persons employed in the proximity of either the deceased or the next of kin should conduct themselves in a manner consistent with the solemnity of the occasion. Unlawful conduct should include physical contact with human remains for purposes unrelated to the preparation process and final disposition, mutilation, concealment of human remains that have been illegally disinterred, and the acquisition or sale of human remains or body parts. This would not apply to any act performed for a bona fide medical purpose or for any other lawful purpose.

See Also: [HANDLING OF HUMAN REMAINS IN CONJUNCTION WITH THE CREMATION PROCESS](#)

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#### Prepaid Contracts

*Developed by the Government and Legal Affairs Task Force of the International Cemetery and Funeral Association*

The nature of contracting for cemetery and funeral merchandise and services on a preneed basis is different from most other consumer transactions because it involves paying for something today which isn't expected to be received for some period of time—perhaps decades. Therefore, it is important to have safeguards to protect the consumer's interests.

The transaction is further complicated by the fact that it is designed to be completed only when one of the parties, the purchaser or a third party beneficiary, has died. Consequently, the relatives or close friends of the deceased are the ones who will actually know whether the transaction was completed as specified in the prepaid contract. This combination of factors creates the potential for misunderstanding about what the deceased wanted or expected. The risk of misunderstanding can be substantially reduced by the use of clearly-worded, detailed prepaid contracts between sellers and purchasers.

Since the proliferation of preneed sales is a fairly recent development, there has been little statutory guidance about what provisions should be specifically included in the prepaid contract. Certain guidelines should augment general contract disclosures to better inform consumers of the nature of the prepaid contract transaction.

#### PRINCIPLES

1. Prepaid contracts should conform to all applicable state and federal statutes and regulations.
2. Prepaid contracts should be written in plain English, and clearly state the merchandise and services that purchasers are buying and their prices. Use of legal or industry-specific jargon should be avoided, to the extent possible.
3. Charges should be itemized. The itemization should be in greater detail than just a recitation of prices. It should include a complete description of the services to be rendered and an unambiguous description of the merchandise to be delivered.
4. When prices of merchandise or services to be delivered in the future are not guaranteed, or an additional payment may be required in the future, a statement to that effect should be included in the prepaid contract and initialed by the purchaser.
5. There should be an explanation of how the purchaser's funds will be protected to assure the seller's performance in compliance with the prevailing prepaid contract law.
6. The contract must clearly state what happens if merchandise is not available at delivery time and substitution is necessary. In the event of a manufacturer's discontinuation of a model, the description of the merchandise should be sufficiently complete for the authorizing agent to make a decision, based upon objective criteria, about the comparability of a needed substitution.
7. No substitution should be possible without the consent of the purchaser, or upon his or her death, the authorizing agent who lawfully controls the final disposition of the remains. However, the authorizing agent should not be allowed to initiate a material change which is inconsistent with the purchaser's wishes, for the purpose of obtaining a refund, based upon the statutory requirement to adhere to the directions of the deceased. In this regard, the prepaid contract could contain a provision, which is initiated by the purchaser, either prohibiting any changes, or alternatively, specifying what instructions could be modified and by whom.
8. The seller may enter into a written agreement with the purchaser of a prepaid contract providing for payment of a finance charge on any amount due to the seller. The prepaid contract should conform to all other applicable state and federal statutes and regulations governing

imposition of finance charges.

9. There should be a clear disclosure of any applicable law allowing for cancellation by the purchaser within the first few days of entering into a prepaid contract. The prepaid contract should clearly explain whether and under what terms the prepaid contract may be cancelled, after that initial cancellation period, if any.
10. Regulatory authorities should be encouraged to allow placement of all required disclosures together as an addendum to the prepaid contract, rather than requiring disclosures on the face of the prepaid contract. The following should be required when an addendum to the prepaid contract is allowed:
  - a) The seller should be required to obtain a signature of the purchaser on the addendum, in addition to prepaid contract;
  - b) The addendum should be in an easy-to-read format with pages the same size as the prepaid contract;
  - c) The type size should be no smaller than 10 points and the printing should be high contrast for easy readability;
  - d) Subheadings to identify groupings or types of disclosures should be provided for clarity.
11. The purchaser of a prepaid contract may irrevocably waive and renounce his or her right to cancel the prepaid contract. This is essential to purchasers trying to satisfy eligibility requirements for Medicaid and Supplemental Security Income benefits. The waiver and renunciation may be included as a provision of the prepaid contract or made as an addendum, providing that it is signed by the purchaser. The irrevocability of the prepaid contract should not affect the right of the purchaser to change the provider of the prepaid contract.
12. Copies of the prepaid contract and supplemental material, such as information on credit life insurance and transfer or exchange plans, should be provided to the purchaser at the time of the preneed sale.
13. Copies of the prepaid contract and at need documentation should be provided to the authorizing agent at the time of making at need arrangements to ensure that the merchandise and services match those specified in the prepaid contract. A list of items substituted should be a written part of the at need documentation.
14. Copies of all prepaid contracts and at need documentation should be retained by the seller for a specified period of time after performance.
15. Upon performance, or cancellation of a prepaid contract by mutual agreement between the seller and the purchaser, or upon unilateral cancellation by the seller by reason of default of the purchaser, or other valid cancellation by reason of transfer to another provider, or otherwise, the seller should submit sufficient documentation to the trustee to enable withdrawal of all funds contributed, and all earnings attributable to the prepaid contract.

Model Guidelines | preneed | prepaid contract | Login or register to post comments

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#### Model Guidelines for State Laws and Regulations

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#### Written Price Disclosures Prior To Purchasing

*Developed in 1998 by the Government and Legal Affairs Task Force of the International Cemetery and Funeral Association*

#### BACKGROUND

When consumers consider contracting for cemetery and funeral merchandise or services, whether on a preneed or an at-need basis, important information that may influence purchasing decisions should be available. Chief among this data are truthful and accurate prices given in written form prior to a purchasing decision being made.

Although the Federal Trade Commission (FTC) Funeral Rule mandates certain written price disclosures by funeral establishments, many related entities including cemetery and crematory authorities, and memorial and casket retailers are generally not covered. As a practical matter, many volunteer, municipal, religious, and fraternal entities organized under various state laws would continue to be excluded from the Funeral Rule due to the FTC's limited jurisdiction over such organizations. However, state regulatory authorities would not be similarly restricted in their coverage.

#### PRINCIPLES

1. Sellers of funerals, interment rights and related merchandise or services, including cremation, should provide a written price list of all such items offered for sale to a potential purchaser where the purpose of the discussion pertains to the sale of any of these items. Where a large number of items are offered for sale in a category, a range of prices may be used.
2. The potential purchaser should be allowed to retain a copy of the price list for future reference, which may be combined with other required disclosures.
3. The price list should be provided at any location where the meeting between the seller and potential purchaser occurs, not solely at the seller's place of business.
4. The price list should contain the name, address, and telephone number of the seller, and contain the effective date of the prices.
5. Price information should be provided over the telephone when requested by the caller.
6. For enforcement purposes, a warning should be issued by the state regulatory authority for an initial violation. Subsequent violations by the same seller should be assessed based on a graduated scale of monetary penalties.

Model Guidelines [FTC funeral rule](#) [preneed](#) [price list](#) [Login or register to post comments](#)

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**FEDERAL REGULATIONS  
AFFECTING CEMETERIES FUNERAL HOMES**

U.S. DEPT. OF TREASURY/IRS		
Citation	Regulation	Link
IRC Sec. 453C	Repeal of Installment Method	<a href="http://www.irs.gov/efile/section_453_internal_revenue_code.aspx">www.irs.gov/efile/section_453_internal_revenue_code.aspx</a>
IRC Sec. 460	Construction Contracts	<a href="http://www.taxalmanac.org/index.php/Sec_460_Special_rules_for_long-term_contracts">www.taxalmanac.org/index.php/Sec_460_Special_rules_for_long-term_contracts</a>
IRC Sec. 501(c)(13)	Tax-Exempt Cemeteries	<a href="http://www.taxalmanac.org/index.php/Sec_501_Exemption_from_tax_on_corporations_certain_trusts_etc">www.taxalmanac.org/index.php/Sec_501_Exemption_from_tax_on_corporations_certain_trusts_etc</a>
IRC Sec. 642(f)	Perpetual Care Funds	<a href="http://www.taxalmanac.org/index.php/Sec_642_Special_rules_for_credits_and_deductions">www.taxalmanac.org/index.php/Sec_642_Special_rules_for_credits_and_deductions</a>
IRC Sec. 685	Funeral Trusts	<a href="http://www.taxalmanac.org/index.php/Internal_Revenue_Code_Sec_685_Treatment_of_funeral_trusts">www.taxalmanac.org/index.php/Internal_Revenue_Code_Sec_685_Treatment_of_funeral_trusts</a>
IRC Sec. 3508	Direct Sellers	<a href="http://www.taxalmanac.org/index.php/Internal_Revenue_Code_Sec_3508_Treatment_of_real_estate_agents_and_direct_sellers">www.taxalmanac.org/index.php/Internal_Revenue_Code_Sec_3508_Treatment_of_real_estate_agents_and_direct_sellers</a>
Rev. Rul 84-41	Independent Contractors	<a href="http://www.taxalmanac.org/index.php/Rev_Rul_84-41">www.taxalmanac.org/index.php/Rev_Rul_84-41</a>
Rev. Rul 87-127	Preneed Trust Income	<a href="http://www.taxalmanac.org/index.php/Rev_Rul_87-127">www.taxalmanac.org/index.php/Rev_Rul_87-127</a>
PLR 9533002	Preneed Sale of Burial Plots	<a href="http://www.legalbitstream.com/scripts/isyawebext.dll?top=get&amp;uri=/sysquery/ri166f3/1/doc">www.legalbitstream.com/scripts/isyawebext.dll?top=get&amp;uri=/sysquery/ri166f3/1/doc</a>
PLR 199935060	Preneed Sale of Burial Plots	<a href="http://www.legalbitstream.com/scripts/isyawebext.dll?top=get&amp;uri=/sysquery/ri166f7/1/doc">www.legalbitstream.com/scripts/isyawebext.dll?top=get&amp;uri=/sysquery/ri166f7/1/doc</a>
PLR 9801027	Preneed Cemetery Merchandise Trust	<a href="http://www.legalbitstream.com/scripts/isyawebext.dll?top=get&amp;uri=/sysquery/ri166fb/1/doc">www.legalbitstream.com/scripts/isyawebext.dll?top=get&amp;uri=/sysquery/ri166fb/1/doc</a>

U.S. DEPT OF LABOR/OSHA		
Citation	Regulation	Link
29 U.S.C. 651, et seq.	The Occupational Health & Safety Act of 1970	<a href="http://www.access.gpo.gov/cgi-bin/edoc/cgibin/browse.usc&amp;docid=Cite+29USC651">http://www.access.gpo.gov/cgi-bin/edoc/cgibin/browse.usc&amp;docid=Cite+29USC651</a>
29 U.S.C. Sec 151-169	National Labor Relations Act "NLRA"	<a href="http://www.union-organizing.com/nlra.html">www.union-organizing.com/nlra.html</a>
29 U.S.C Chpt 8	Fair Labor Standards Act "FLSA"	<a href="http://finduslaw.com/fair_labor_standards_act_flsa_29_us_code_chapter_8">http://finduslaw.com/fair_labor_standards_act_flsa_29_us_code_chapter_8</a>
29 CFR Part 1910, et seq.	General Industry Guides	<a href="http://www.ilpi.com/MSDS/oshah/1910_1200.html">www.ilpi.com/MSDS/oshah/1910_1200.html</a>
29 CFR Part 1910.1030	Bloodborne Pathogens Standard	<a href="http://www.ilpi.com/MSDS/oshah/1910_1200.html">www.ilpi.com/MSDS/oshah/1910_1200.html</a>
29 CFR Part 1910.1048	Formaldehyde Standard	<a href="http://www.ilpi.com/MSDS/oshah/1910_1200.html">www.ilpi.com/MSDS/oshah/1910_1200.html</a>
29 CFR Part 1910.1200	Hazard Communication Standard	<a href="http://www.ilpi.com/MSDS/oshah/1910_1200.html">www.ilpi.com/MSDS/oshah/1910_1200.html</a>
29 CFR Part 1926,	Sub. P Excavation Standard	<a href="http://www.osha.gov/pls/oshweb/owasrch.search_form?o_dor_type=STANDARDS&amp;p_top_level=1&amp;p_keyvalue=1926">www.osha.gov/pls/oshweb/owasrch.search_form?o_dor_type=STANDARDS&amp;p_top_level=1&amp;p_keyvalue=1926</a>
29 CFR 825, P.L. 103-3	Family and Medical Leave Act of 1993	<a href="http://www.dol.gov/esa/wid/fmla/fmlaAmended.htm">www.dol.gov/esa/wid/fmla/fmlaAmended.htm</a>

U.S. DEPARTMENT OF JUSTICE		
Citation	Regulation	Link
15 U.S.C. 1-7	Sherman Antitrust Act	<a href="http://www.gamingip.com/Statutes/SI-ShermanAct.html">www.gamingip.com/Statutes/SI-ShermanAct.html</a>
15 U.S.C. 12-27	Clayton Act	<a href="http://www.gamingip.com/Statutes/Clayton/Act-ST-Clayton22-25.html">www.gamingip.com/Statutes/Clayton/Act-ST-Clayton22-25.html</a>
42 U.S.C. 12101, et seq.	Americans with Disabilities Act of 1990	<a href="http://www.eeoc.gov/policy/ada.html">www.eeoc.gov/policy/ada.html</a>
28 CFR Part 36	ADA Title III, Public Accommodations	<a href="http://www.access-board.gov/adaag/html/adaag.htm">www.access-board.gov/adaag/html/adaag.htm</a>

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION		
Citation	Regulation	Link
42 U.S.C. 1981, et seq.	Civil Rights Act of 1991	<a href="http://www.eeoc.gov/policy/cra91.html">www.eeoc.gov/policy/cra91.html</a>
42 U.S.C. 12101, et seq.	Americans with Disabilities Act of 1990	<a href="http://www.eeoc.gov/policy/ada.html">www.eeoc.gov/policy/ada.html</a>



**FEDERAL REGULATIONS  
AFFECTING CEMETERIES FUNERAL HOMES**

29 CFR Part 1625	ADEA Age Discrimination in Employment Act	<a href="http://law.justia.com/us/cfr/title29/29cfr1625_main_02.html">http://law.justia.com/us/cfr/title29/29cfr1625_main_02.html</a>
29 CFR Part 1630	ADA Title I Employment	<a href="http://www.eeoc.gov/policy/ada.html">www.eeoc.gov/policy/ada.html</a>

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

Citation	Regulation	Link
42 U.S.C. 6901, et seq.	Resource Conservation and Recovery Act	<a href="http://law.justia.com/us/codes/title42/usc6901.html">http://law.justia.com/us/codes/title42/usc6901.html</a>
42 U.S.C 6901, et seq.	Comprehensive Environmental Response, Compensation, and Liability Act of 1980	<a href="http://www.epa.gov/lawregs/laws/cercla.html">www.epa.gov/lawregs/laws/cercla.html</a>
40 CFR Parts 280 and 281	Underground Storage Tanks	<a href="http://www.epa.gov/swerust1/fedlaws/cfr.htm">www.epa.gov/swerust1/fedlaws/cfr.htm</a>
42 U.S.C. 6901, et seq.	Medical Waste Tracking Act of 1988	<a href="http://law.justia.com/us/codes/title42/usc6901.html">http://law.justia.com/us/codes/title42/usc6901.html</a>
42 U.S.C. 7401, et seq.	Clean Air Act Amendments of 1990	<a href="http://www.epa.gov/lawregs/laws/caa.html">www.epa.gov/lawregs/laws/caa.html</a>
40 CFR Part 259	Medical Waste Standards	<a href="http://www.epa.gov/waste/lawsregs/rags-non-haz.htm">www.epa.gov/waste/lawsregs/rags-non-haz.htm</a>

**FEDERAL TRADE COMMISSION**

Citation	Regulation	Link
15 U.S.C § 45	Unfair and Deceptive Business Practices	<a href="http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&amp;docid=Cite+15USC45">http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&amp;docid=Cite+15USC45</a>
15 U.S.C § 13	Price Discrimination	<a href="http://www.law.cornell.edu/uscode/15/13.html">www.law.cornell.edu/uscode/15/13.html</a>
15 U.S.C §1692	Fair Debt Collection Practices Act	<a href="http://www.ftc.gov/ftcp-act.htm">www.ftc.gov/ftcp-act.htm</a>
16 CFR Part 453	Funeral Industry Practices Trade Rule	<a href="http://www.ftc.gov/bcp/rulemaking/funeral/index.shtml">www.ftc.gov/bcp/rulemaking/funeral/index.shtml</a>
16 CFR Part 429	Cooling-off Period for Door-to-Door Sales	<a href="http://law.justia.com/us/cfr/title16/16-1.0.1.4.46.html">http://law.justia.com/us/cfr/title16/16-1.0.1.4.46.html</a>
16 CFR Part 433	Preservation of Consumers' Claims	<a href="http://law.justia.com/us/cfr/title16/16-1.0.1.4.48.html">http://law.justia.com/us/cfr/title16/16-1.0.1.4.48.html</a>
16 CFR Part 310	Telemarketing Sales Rule	<a href="http://www.ftc.gov/bcp/rulemaking/tsr/index.shtml">www.ftc.gov/bcp/rulemaking/tsr/index.shtml</a>
16 CFR Part 238	Bait Advertising Guide	<a href="http://www.ftc.gov/bcp/guides/baitads-gd.htm">www.ftc.gov/bcp/guides/baitads-gd.htm</a>
16 CFR Part 251	Use of the Word "Free"	<a href="http://law.justia.com/us/cfr/title16/16cfr251_main_02.html">http://law.justia.com/us/cfr/title16/16cfr251_main_02.html</a>
16 CFR Part 239	Deceptive Advertising of Guarantees	<a href="http://law.justia.com/us/cfr/title16/16-1.0.1.2.18.html">http://law.justia.com/us/cfr/title16/16-1.0.1.2.18.html</a>
16 CFR Part 233	Deceptive Pricing	<a href="http://law.justia.com/us/cfr/title16/16-1.0.1.2.16.html">http://law.justia.com/us/cfr/title16/16-1.0.1.2.16.html</a>
16 CFR Part 435	Mail or Telephone Order Merchandise	<a href="http://ecfr.access.gpo.gov/cgi/text?text-idx?c=ecfr&amp;title=ecfrbrowse/Title16/16cfr435_main_02.tpl">http://ecfr.access.gpo.gov/cgi/text?text-idx?c=ecfr&amp;title=ecfrbrowse/Title16/16cfr435_main_02.tpl</a>
16 CFR Part 255	Guide Concerning Use of Testimonials and Endorsements In Advertising	<a href="http://law.justia.com/us/cfr/title16/16-1.0.1.2.22.html">http://law.justia.com/us/cfr/title16/16-1.0.1.2.22.html</a>
16 CFR Part 444	Credit Practices	<a href="http://law.justia.com/us/cfr/title16/16cfr444_main_02.html">http://law.justia.com/us/cfr/title16/16cfr444_main_02.html</a>

**FEDERAL TRADE COMMISSION**

Citation	Regulation	Link
16 CFR Part 701	Disclosure of Written Consumer Product Warranty Terms and Conditions	<a href="http://law.justia.com/us/cfr/title16/16cfr701_main_02.html">http://law.justia.com/us/cfr/title16/16cfr701_main_02.html</a>
16 CFR Part 702	PreSale Availability of Written Warranty Terms	<a href="http://law.justia.com/us/cfr/title16/16cfr702_main_02.html">http://law.justia.com/us/cfr/title16/16cfr702_main_02.html</a>
15 U.S.C §1681	Fair Credit Reporting Act; Fair and Accurate Credit Transaction Act; 2003 Red Flag Regulations	<a href="http://www.ftc.gov/ps/statutes/031224fara.pdf">www.ftc.gov/ps/statutes/031224fara.pdf</a>

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**FEDERAL REGULATIONS  
AFFECTING CEMETERIES FUNERAL HOMES**

U.S. DEPT. OF VETERANS AFFAIRS		
Citation	Regulation	Link
National Cemeteries Act of 1973		<a href="http://uscode.house.gov/download/pls/24C7.txt">http://uscode.house.gov/download/pls/24C7.txt</a>
38 U.S.C. 2301, et seq.	Burial Benefits	<a href="http://www.law.cornell.edu/uscode/html/uscode38/uscode38_00002301---000_.html">http://www.law.cornell.edu/uscode/html/uscode38/uscode38_00002301---000_.html</a>
38 U.S.C. 2401, et seq.	National Cemeteries	<a href="http://uscode.house.gov/download/pls/38C24.txt">http://uscode.house.gov/download/pls/38C24.txt</a>
38 U.S.C. §901	Allowment for Penalties for Destruction of National Cemetery Property	<a href="http://trac.syr.edu/laws/38/38USC0901.html">http://trac.syr.edu/laws/38/38USC0901.html</a>
18 U.S.C. §1369	Penalties for Destruction of National Cemetery Property	<a href="http://law.onecle.com/uscode/18/1369.html">http://law.onecle.com/uscode/18/1369.html</a>

FEDERAL COMMUNICATIONS COMMISSION		
Citation	Regulation	Link
47 U.S.C. 227	Telephone Consumer Protection Act of 1991	<a href="http://www.fcc.gov/ocb/policy/TCPA-Rules.pdf">http://www.fcc.gov/ocb/policy/TCPA-Rules.pdf</a>
47 CFR Parts 64 and 68	Telemarketing	<a href="http://www.fcc.gov/web/iaad/47cfr.html">http://www.fcc.gov/web/iaad/47cfr.html</a>

FEDERAL RESERVE BOARD		
Citation	Regulation	Link
15 U.S.C. 1601, et seq.	Truth in Lending Act	<a href="http://www.nchelo.org/library/Law/FederalLaws/CreditandInterestRelated/16-Truth%20In%20Lending%20Act.pdf">www.nchelo.org/library/Law/FederalLaws/CreditandInterestRelated/16-Truth%20In%20Lending%20Act.pdf</a>
12 CFR Part 226	Regulation Z	<a href="http://www.fdic.gov/regulations/laws/rules/6500-1400.html">http://www.fdic.gov/regulations/laws/rules/6500-1400.html</a>

STATUTES ALSO PROVIDING PRIVATE ENFORCEMENT		
Citation	Regulation	Link
15 U.S.C. 107	Sherman Antitrust Act	<a href="http://www.gamingip.com/Statutes/SL-ShermanAct.html">www.gamingip.com/Statutes/SL-ShermanAct.html</a>
15 U.S.C. 12-27	Clayton Act	<a href="http://www.gamingip.com/Statutes/ClaytonAct/ST-Clayton72-25.html">www.gamingip.com/Statutes/ClaytonAct/ST-Clayton72-25.html</a>
17 U.S.C. 101, 500	Copyright Act of 1978	<a href="http://www.copyright.gov/title17/92chap1.html">http://www.copyright.gov/title17/92chap1.html</a>
42 U.S.C. 12101 et seq.	Americans With Disabilities Act	<a href="http://www.eeoc.gov/policy/ada.html">www.eeoc.gov/policy/ada.html</a>
42 U.S.C. 21	Civil Rights Act	<a href="http://www.law.cornell.edu/uscode/42/4221.html">www.law.cornell.edu/uscode/42/4221.html</a>

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Mr. RUSH. Thank you.  
The chair now recognizes Mr. Earl for 5 minutes.

**TESTIMONY OF RANDALL L. EARL**

Mr. EARL. Mr. Chairman and members of the subcommittee, thank you very much for the opportunity to present the view of the National Funeral Directors Association on H.R. 3655.

I am Randall L. Earl, a licensed funeral director from Decatur, Illinois and have been practicing my profession for 40 years. I own and operate the 125 year old Brintlinger and Earl Funeral Home in Decatur and serve Burr Oak as well as B and E Crematory in also Decatur. We have nine full-time employees and seven part-time employees. We perform approximately 400 funerals a year.

I am appearing here today in my capacity as an elected official of the National Funeral Directors Association. NFDA is the leading funeral service organization in the United States and provides the national voice for the funeral service profession. One of NFDA's missions is to safeguard the trust and integrity of the funeral profession. In that regard, we strongly support H.R. 3655 and the intent in which it was proposed. However, before I discuss the specifics of H.R. 3655, I think it would be helpful to your deliberations to provide some background on our experience with the FTC rule.

NFDA and its members today strongly support retention of the FTC rule as the uniform standard for funeral homes as well as a rule that protects consumers served by funeral homes. Since the rule was enacted, the marketplace for funeral and burial goods and services has changed dramatically. With the introduction of many non-traditional sellers, most recently for example, Wal-Mart and Amazon.com began selling caskets directly to consumers. When consumers do business with these non-traditional providers they see none of the protections afforded by the FTC rule when they purchase the same goods from funeral homes. It is therefore necessary in our judgment to establish a separate rule as outlined in H.R. 3655.

We believe the rule which is enforced by FTC has benefited consumers by providing basic protections and safeguards to consumers who do business with funeral homes. We also believe that the Funeral Rule has benefited funeral providers. Many NFDA members have reported that the rule has made them better businessmen and women by helping them explain to consumers the cost of all different components of a funeral thereby giving families a greater understanding of the cost involved. In addition, to maintain compliance levels funeral homes now offer continuous staff training and education that reinforces the professionalism of the funeral home staff. As evidenced by the scandals at Burr Oak Cemetery, Menorah Gardens Cemetery, Tri-State Crematory and many other incidents, there is no question that consumers are being injured because cemeteries and other sellers of funeral or burial goods or services are not subject to uniform Federal standards or a haphazard and inconsistent set of State laws.

As a result, NFDA strongly supports H.R. 3655 which requires the FTC to establish a Federal rule that applies the same or similar disclosures and standards of practice provided under the Funeral Rule to all sellers of funeral or burial goods or services not

now covered by the rule. We are particularly supportive of the inclusion of all non-profit and religious organizations as well as State and local political subdivisions. We strongly believe that consumers should enjoy the same protections regardless of where or whom they purchase funeral or burial services.

In conclusion, Mr. Chairman and members of the subcommittee, NFDA believes this bill outlines for the FTC a rule that NFDA has long argued was necessary given the dramatically changed marketplace and the rise of new and non-traditional sellers who now offer consumers many of the same funeral or burial goods or services provided by funeral homes but without protections afforded by the Funeral Rule. While H.R. 3655 does impose some modest requirements on funeral homes, we believe them to be appropriate and consistent with our policy. Finally, while we understand this rule might not have prevented the widely reported scandals that occurred at Burr Oak, Menorah Garden Cemetery or the Tri-State Crematory, NFDA believes H.R. 3655 will raise the bar for everyone and correct many of the existing problems that led to those situations. As we know, after 26 years under the FTC rule we are better funeral directors for the experience and have a much greater awareness that good consumer practices are good business practices as well.

Thank you for the opportunity to present the views of the National Funeral Directors Association on this very important legislation. I will be happy to answer any questions you might have.

[The prepared statement of Mr. Earl follows:]



Mr. Chairman and members of the Subcommittee, thank you for the opportunity to present the views of the National Funeral Directors Association (NFDA) on H.R. 3655, a bill to require the Federal Trade Commission (FTC) to enact a rule to provide certain uniform federal protections and remedies for consumers who purchase funeral or burial goods or services from cemeteries, crematories and other third-party sellers, as well as certain practice requirements for those entities when selling to the public.

I am Randall L. Earl, a licensed funeral director from Decatur, Illinois and have been practicing my profession for 40 years. I own and operate the 125 year old Brintlinger & Earl Funeral Homes in Decatur and Cerro Gordo as well as B&E Crematory also in Decatur. We have 9 full-time employees and 7 part-time employees. We perform approximately 400 funerals a year. I am appearing here today in my capacity as an elected officer of the National Funeral Directors Association.

The National Funeral Directors Association (NFDA) represents more than 10,000 funeral homes and over 19,000 licensed funeral directors and embalmers in all 50 states. The overwhelming majority of NFDA-member firms are independently owned and operated businesses with fewer than 10 employees and have been in the same family for over three generations. NFDA is the leading funeral service organization in the United States and provides the national voice for the funeral service profession.

NFDA has a great interest in ensuring the trust and integrity of the funeral service profession remains high in the opinion of the families its members serve. In that regard, we strongly support H.R. 3655 and the intent with which it was proposed.

However, before I discuss the specific provisions of H.R. 3655, it would be helpful to your deliberations to provide some background on our experience with the FTC Funeral Rule, which currently applies only to those who provide funeral goods *and* services to the public... namely funeral homes.

**IN THE BEGINNING**

In its role as the national representative of the funeral profession, NFDA has been actively involved in all facets of the FTC's development and implementation of the Funeral Rule. During the original rulemakings and the first review, NFDA voiced its opposition to the Funeral Rule. At that time, it was NFDA's position that regulation of the funeral profession should remain with at the state level and should not be exercised at the federal level.

Nevertheless, the Funeral Rule was promulgated in 1982, became effective in 1984 and has been in place for 26 years. Since then, members of the funeral service profession have incorporated the requirements of the Funeral Rule into their day-to-day operations. Consumers, when dealing with funeral directors, have been afforded the protections and informational benefits provided by the Funeral Rule.

**TODAY**

NFDA and its members today strongly support retention of the FTC Funeral Rule as a uniform standard for funeral homes, as well as a rule that protects consumers served by funeral homes. However, when the FTC Funeral Rule was developed 26 years ago, funeral goods and services were primarily sold *only* by funeral directors and, therefore, the scope of the Funeral Rule was limited by the Commission to the sellers of funeral goods *and* services.

Since the Rule was enacted, however, the marketplace for funeral and burial goods or services has changed dramatically. In addition, subsequent amendments to the Funeral Rule, including banning casket

handling fees, have encouraged non-traditional sellers to enter the market. Most recently, for example, Wal-Mart and Amazon.com began selling caskets directly to consumers. When consumers deal with these non-traditional providers, however, they receive none of the protections afforded by the FTC Funeral Rule. It is therefore necessary, in our judgment, to either update the FTC Funeral Rule so it reflects the realities of the current marketplace versus the marketplace that existed 26 years ago, or to establish a separate rule that addresses all sellers of funeral goods *or* services, as contemplated by H.R. 3655. If the original intent of the Funeral Rule remains valid, consumers must be protected from any seller of funeral goods or services from whom they purchase such services or merchandise.

#### **CONSUMER BENEFITS OF FUNERAL RULE**

NFDA has no empirical data with which to measure how the Rule has benefited consumers by protecting them against injurious misrepresentations, unauthorized embalming or forced purchases of unwanted items. It is not possible to determine the extent to which those subject to the Rule would have engaged in any of these practices had the Rule not been in effect. What can be determined, however, is the fact that the FTC Funeral Rule prohibits such practices and, in so doing, provides basic protections and safeguards to consumers. On that basis alone, it has benefitted consumers.

NFDA and its members strongly support retention and strengthening of the FTC Funeral Rule, or the establishment of a separate rule, as outlined in H.R. 3655, so that all funeral consumers may benefit from basic protections and safeguards regardless of where or from whom they purchase funeral or burial goods or services. While the Funeral Rule might not have provided all of the benefits that the Commission predicted in its 1982 Statement of Basis and Purpose, the Rule has provided consumers dealing with funeral homes the following:

- A guarantee that the consumer will receive written price lists showing the itemized prices of funeral goods and services.

- A guarantee that the consumer will receive the itemized price lists before selecting any goods or services.
- The general price list given to the consumer will be in a format that allows the consumer to easily compare the prices of the funeral provider with any other funeral provider.
- The price lists will contain mandatory disclosures that will provide helpful information to consumers regarding funeral goods and services they might wish to purchase or decline to purchase.
- The consumer will receive a written itemized statement of the funeral goods and services he or she purchased at the end of the arrangements.
- The consumer will be protected against misrepresentations that might mislead the consumer into purchasing unnecessary funeral goods or services.
- The consumer will not be compelled to purchase any unwanted funeral goods or services.
- The consumer will be provided the right to bring in third-party merchandise and have the funeral provider service that merchandise without any restrictions or fees.

#### **NEED FOR ADDITIONAL CONSUMER PROTECTIONS**

Unfortunately, while every consumer who buys funeral goods or services from a funeral home is entitled to the protections afforded by the FTC Funeral Rule, no such safeguards are given to consumers who purchase funeral goods and/or services from non-traditional, third-party sellers not subject to the Rule. Ironically, a new segment of sellers has entered the funeral marketplace since the FTC Funeral Rule was enacted, yet consumers who deal with these new providers are not provided any of the protections of the FTC Funeral Rule.

Therefore, in order to ensure that every consumer of funeral goods and services enjoys these benefits and protections, it is necessary to modify the definitions of “funeral provider” and “funeral services.” Today, tens of thousands of consumers purchase funeral goods and/or services from sellers who are not subject to the



Rule because they do not sell funeral “goods *and* services.” Likewise, many consumers buy from sellers who escape coverage of the Rule because they do not offer both funeral ceremonies and the care of the body, as required to be selling “funeral services.” We believe that H.R. 3655 adequately addresses this problem.

Strengthening the Rule to cover all sellers of funeral goods *or* funeral services, or the establishment of a separate rule to cover all sellers, will not only benefit consumers who purchase goods and services from non-traditional sellers, but will also benefit consumers who deal with funeral directors. The Commission and the FTC Staff have often stated their belief that the pro-competitive and informational benefits of the Rule will increase as more consumers become aware of the Rule and their rights under the Rule. By expanding the protections and benefits of the Rule to all consumers, and by prohibiting restrictions and handling charges imposed by all sellers, the FTC would increase the benefits of the Rule to all purchasers. In the alternative, H.R. 3655 would require the FTC to extend these safeguards to all sellers of funeral goods or services under a separate rule. We strongly support that approach, as well.

Regarding the issue of the cost that might be imposed on non-traditional sellers if the Rule is strengthened, the FTC Staff has always found that compliance costs with the Rule are minimal and do not significantly raise business costs for funeral providers. Therefore, NFDA sees no reason the same will not prove true for non-traditional providers and strengthening the Rule, or establishing a separate rule for these sellers to cover all transactions involving funeral goods or funeral services, will impose little cost for sellers.

#### **FUNERAL RULE HAS BENEFITED FUNERAL HOMES, AS WELL**

On the issue of whether the Funeral Rule has benefited funeral providers, many NFDA members have reported that the Rule has made them better businessmen and women by helping them explain to consumers the cost of all of the different components of a funeral, thereby giving families a greater understanding of the costs involved. In addition, despite the cost of compliance, the Funeral Rule also benefits funeral homes by

emphasizing the need for continuous staff training and education. Efforts to maintain compliance levels reinforce the professionalism of the funeral home staff by reminding them of the right of funeral consumers to the timely receipt of detailed and itemized price information.

#### **INCONSISTENCIES OF THE FUNERAL RULE**

NFDA believes the restrictive definitions found in the current Funeral Rule arbitrarily provide some consumers with Funeral Rule protection while depriving others of that protection. For example, assume a cemetery operates a crematory that accepts dead bodies directly from the public. Since the cemetery is presumably selling funeral services when it accepts the body and prepares it for cremation, it should be subject to the FTC Funeral Rule. If that cemetery required a consumer to purchase an urn, vault, casket or other merchandise only from the cemetery in order to have the cremated remains interred in the cemetery, it would violate the handling fee ban imposed by the Funeral Rule.

However, if the cemetery elected not to accept bodies directly from the public for cremation, it would not be subject to the Funeral Rule since it would not be selling funeral services. Therefore, when it required a consumer to purchase an urn, vault, casket or other merchandise only from the cemetery as a condition of interring the cremated remains, the cemetery would *not* be in violation of the Funeral Rule.

What could possibly be the rationale for allowing some cemeteries to impose handling fees and tying arrangements while prohibiting others from imposing handling fees and tying arrangements based solely upon whether they prepare bodies for cremation? The definitions that the FTC developed 26 years ago when the death care industry was fairly compartmentalized simply do not serve the interests of consumers today as segments of the death care industry blend and cross-over. The definitions employed by the FTC in the Funeral Rule must be updated to fit the market as it now exists, not as it existed a generation ago. We believe that H.R. 3655 adequately addresses this problem.

**COMPLIANCE RATE WITH THE FUNERAL RULE**

From every indication, it appears that compliance with the requirements of the Funeral Rule by funeral providers is very high. The Funeral Rule undercover shopper campaigns conducted by the FTC and state authorities have found a high aggregate compliance level with the cornerstone of the Rule -- the distribution of the General Price List to consumers. While these compliance rates vary from city to city and year to year, we believe the FTC has been encouraged by the findings of the sweeps as compliance levels have remained relatively high.

There is no question that consumers are being injured because cemeteries and other sellers of funeral goods or services are not subject to the Funeral Rule or any other uniform federal standards. In addition, the informational and pro-competitive benefits that the Rule provides are being limited by the fact that the Rule does not protect consumers who purchase funeral goods or services from non-funeral providers. For example:

- (a) While funeral consumers may be reluctant to switch funeral homes, for most cemetery consumers, a switch is impossible. If a decedent has already purchased a plot in a cemetery, his survivors have no alternatives but to deal with that cemetery. Even if a consumer has not yet purchased a plot, he or she could still be irrevocably tied to a cemetery if the consumer's spouse or other family members are interred there. The consumer in that case would have a very limited choice; deal with the cemetery or disinter the remains of the consumer's family. The superior bargaining position this gives a cemetery is far greater than that held by a funeral home. It is quite apparent that the cemetery consumer is in a uniquely vulnerable position when negotiating with the cemetery. Clearly, the protections afforded consumers by the Funeral Rule should be afforded consumers dealing with the cemetery, either through the Funeral Rule or by establishing a separate rule, as contemplated by H.R. 3655.

(b) By expanding the coverage of the Funeral Rule to all funeral consumers, or by establishing a separate rule, as contemplated by H.R. 3655, the Commission would greatly increase informed consumer choice. Every funeral consumer would receive a price list prior to purchasing funeral or burial goods or services. Moreover, because the Funeral Rule does impose a degree of uniformity in price lists that could be adopted in the rule covering all sellers, consumers could easily compare prices between traditional funeral providers and non-traditional sellers.

(c) One of the principal benefits of the Funeral Rule identified by the Commission is that it protects consumers from the economic injury they sustained when they purchase unnecessary products because of misrepresentations or lack of information. Unless the Commission finds that consumers who deal with non-traditional sellers are more knowledgeable about laws, regulations and the practical necessities of funeral goods and services than consumers dealing with traditional funeral providers, the informational benefits of the Funeral Rule must be extended to all funeral consumers. We believe that H.R. 3655 will accomplish that goal.

(d) During the review of the Funeral Rule, the FTC Staff stated that the “foundation of consumer choice under the Rule is the right to purchase only those items the consumer wants or needs, and to decline other items.” The unbundling requirements of the Rule are violated whenever a consumer is compelled to purchase funeral or burial goods or services that he or she did not want or need. Moreover, in the review of the Funeral Rule, the Commission further held that imposing a handling fee of any type upon a consumer who elects to purchase funeral goods and services elsewhere is also a violation of the Rule’s unbundling requirements. Therefore, whenever a funeral consumer is forced to purchase an unwanted item or is charged a handling fee for using an item purchased elsewhere, the Funeral Rule’s unbundling requirements are

violated. We believe the provisions of H.R. 3655 dealing with this issue are very good, although we would like to see stronger and more-specific language requiring cemeteries and other sellers of funeral or burial goods or services to accept third-party items purchased by the consumer from another vendor.

#### **COMMENTS ON H.R. 3655**

With that as a background, I would now like to address H.R. 3655. NFDA strongly supports H.R. 3655, which requires the FTC to establish a federal rule that applies the same or similar standards of practice to cemeteries, crematories and all sellers of funeral or burial goods *or* services to the public. Most importantly, such a federal rule responds to the 21st-century death care marketplace and offers added protections for consumers who deal directly with all sellers of funeral goods or services.

We are particularly supportive of the inclusion of all 501(c) (3) and religious organizations, as well as state and local political subdivisions. We strongly believe that consumers should enjoy the same protections *regardless* of where or from whom they purchase funeral or burial goods or services.

In addition, we are glad to see that the rule would not preempt state laws in this area and even provides an incentive for states to improve their existing laws. NFDA has long encouraged our state funeral service associations to improve their laws and regulations as it relates funeral homes, cemeteries and all other third-party sellers. While some might argue that, without preemption, this rule is redundant. We believe it provides a minimum, uniform standard that would apply in states that have few or no laws or regulations governing cemeteries, crematories or other third-party sellers.

In addition, H.R. 3655 gives state Attorneys General the authority to bring actions in federal court under the rule. NFDA also supports the requirement that enforcement would be under existing unfair and deceptive practices laws and regulations rather than establishing any new ones.

**CONCLUSION**

In conclusion, Mr. Chairman and members of the Subcommittee, NFDA believes this bill outlines for the FTC a rule that NFDA has long argued was necessary given the dramatically changed marketplace and the rise of new and non-traditional sellers, who now offer consumers many of the same funeral or burial goods or services provided by funeral homes – but *without* the protections afforded by the FTC Funeral Rule. While H.R. 3655 does impose some modest requirements on funeral homes, we believe them to be appropriate and consistent with our policy.

Finally, while we understand that this rule might not have prevented the egregious, widely reported scandals that occurred at Burr Oak Cemetery, Menorah Garden Cemetery or the Tri-State Crematory, NFDA believes H.R. 3655 will raise the bar for everyone and correct many of the existing problems that lead to those situations. As we know after 26 years under the FTC Funeral Rule, we are better funeral directors for the experience and have a much greater awareness that good consumer practices are good business practices, as well.

Thank you for the opportunity to present the views of the National Funeral Directors Association on this very important legislation. I will be happy to answer any questions you or the other Subcommittee members might have.

Mr. RUSH. The chair thanks all of the witnesses for their opening statement and the chair now recognizes himself for 5 minutes for the purposes of asking questions of the witnesses. The chair wants to thank at this point the Funeral Consumers Alliance, AARP and the National Funeral Directors Association, NFDA, for their support of this legislation.

I want to start by questioning Mr. Harwood. Mr. Harwood, in your testimony you expressed some sound supports of provisions of this legislation that expands the FTC's authority to include non-profit, municipal and religious cemeteries. Why do you think this provision is seen as so essential to this bill?

Mr. HARWOOD. Mr. Chairman, currently the cemetery industry consists of both for-profit entities and not-for-profit entities. In our experience, a majority of cemeteries are not-for-profit and the numbers vary but, you know, there are many thousands of not-for-profit cemeteries. Some are owned by cities and counties. Some are owned by religious organizations. Some are associated with other entities. The FTC's legislation, the FTC law wouldn't currently reach those entities because we have no jurisdiction under our consumer protection authority over not-for-profit entities.

When we looked at this issue last in 2008 and discussed whether we should consider extending some of the Funeral Rule provisions to the cemetery industry, we concluded that doing so would create an odd regulatory situation because the regulation only reached some cemeteries and left out a majority of the cemeteries that would otherwise be affected. Secondly, we were concerned that consumers would be confused if some cemeteries were covered and other cemeteries were not. Your legislation addresses that concern by making all cemeteries subject or potentially subject to the same regulation.

Mr. RUSH. Judge Holmes, this provision of and inclusion of the for-profits, and not-for-profits, and municipal and religious cemeteries, and do you have, did you discuss this provision in the topic and this provision addresses? Did you have the opportunity to discuss that in your deliberations?

Ms. HOLMES. Yes, Mr. Chairman, we did and the solution that the bill came up with which I think is a great solution, religious cemeteries, public cemeteries and cemeteries that have fewer than 25 burials in the past 2 years are what is called partially exempt. So while they may not have to acquire licenses for their individual workers, they do still have to comply with various portions of the Cemetery Oversight Act, those portions that would be consumer-related. They have to reasonably maintain the cemetery property. They must comply with the mapping of their cemetery. They must keep an index. They must submit to periodic inspection of the cemetery. They must submit to the Consumer Bill of Rights so they must follow all of the Consumer Bill of Rights although they don't have to comply with the licensure rules that the for-profit cemeteries would have to comply with. So we thought that was a really good compromise.

Mr. RUSH. Thank you.

Mr. Elvig, in your testimony you raised some concerns about this provision along the lines of constitution and jurisdictional concerns.

What is your position? Do you agree with Mr. Harwood or do you have another position?

Mr. ELVIG. Well, my position would be different. Our position would be different from an angle and that is that when you start talking about municipal cemeteries or religious cemeteries, and religious cemeteries can be the gamut from Muslim cemeteries, Jewish, Catholic to Protestant, a variety of religious cemeteries, we are talking about certain constitutional protections as to how much you can regulate and what success you may have in the courts in trying to prosecute in those cemeteries. And so our concern is that as one moves through the subject of municipal and religious cemeteries, what constitutionality you may have. Could a Federal Trade Commission rule honestly be imposed upon the City of Los Angeles if it operated a cemetery, for say. I am dealing with a cemetery in Florida that it is publicly operated right now that is in a court case. How much jurisdiction can really be held over that Florida cemetery? So our concerns are there and it would seem to me that there would a lot of homework necessary and for that reason we would think that if the FTC was to adopt a rule they should adopt it for cemeteries and not a combined one of funerals and cemeteries.

Mr. RUSH. Thank you. The chair's time has expired.

The chair now recognizes Mr. Whitfield for 5 minutes.

Mr. WHITFIELD. Well, I want to thank the panel for your testimony today. We genuinely appreciate your taking time to do so.

Judge Brown Holmes, you may be the most objective person here today because you are not a regulator and you are not in the business, and you spent a lot of time looking into this subject matter. And it sounds like to me that you all have been quite successful in addressing the problem in Illinois, and I am sure you have not looked at other States or maybe you have to a degree but just from your perspective, do you feel like that a Federal law would be helpful to address some of these concerns nationwide?

Ms. HOLMES. You know, it is a good question and I have thought about that, and I actually do think that a Federal law could serve to preempt in States that don't have regulations right now. The kind of disaster that we had in Illinois had there been a Federal law that required consumer protection, this may not have happened but we had nothing. We had a very disjointed system in our State and so it was the tragedy that brought about the need to get in and do the regulation. Quite possibly if the Federal government said to States do something about this or here is the rule. The rule must be complied with and there is authority with the FTC utilizing these State attorneys general, the state attorneys general could then get in and make certain that this type of thing did not happen in those States where there is no regulation. We did look at some States and what we found is that it was the tragedy that then brought about the need for the rule and regulation. I think if we get in and have the rule and regulation in the beginning, possibly it stops the tragedy.

Mr. WHITFIELD. Unfortunately, I have not had the opportunity to read 3655 but I note generally and understanding the chairman's reputation of always having good legislation except maybe on occasion, I am sure this is an effective bill but you seem to be saying



that preemption would be important because a lot of these States do have different rules and regulations and I don't believe this bill has Federal preemption, does it?

Ms. HOLMES. No, no, no, what I mean is the Funeral Rule prior to the 1984 Act established particular rules. The funeral industry has changed as a result of it. There is an opportunity for States to opt out if their regulation is better than the Funeral Rule so it puts that in the forefront of the minds of the funeral industry. The cemetery industry, however I think for some reason what it appears to us has been parsed out. I am not certain why. We didn't investigate why that is but it appears to me and from all of the individuals who testified before us the average consumer joins the funeral director and the cemetery. They don't look at them as a separate entity, a separate business, a separate industry; but what we found and learned is that they are, and it appeared to us to be, sort of unusual. One portion of that industry is very heavily regulated and the portion of the industry that is basically almost in perpetuity is not regulated. And so it would seem to me that if there are some regulations particularly given that it is at that back end that there seems to be the most abuse that it would be extremely helpful in drawing attention to the issue and preventing this from occurring.

Mr. WHITFIELD. OK.

Mr. Harwood, someone in their testimony brought up this issue of non-profits and in some instances States or municipalities are operating cemeteries, for example. Can the FTC assess civil penalties on another governmental entity for violations?

Mr. HARWOOD. My understanding and I may have to correct this, but my current understanding is that where a municipality functions in a role that would be a businesslike role that we have the authority to assess civil penalties in those situations. It is not exercised often. It is obviously not good for intergovernmental relations but the authority does exist where necessary to do so.

Mr. WHITFIELD. OK, so you can do so then?

Mr. HARWOOD. Yes, that is my understanding.

Mr. WHITFIELD. Now, the Funeral Rule that was adopted by the FTC was that required by statute or did you all just do that under self initiation?

Mr. HARWOOD. The Funeral Rule dates from 1974 and it was actually initiated, well '72 actually, it was actually initiated by the FTC under its rulemaking authority called the Magnus Moss Act rulemaking authority so it was actually initiated by the FTC.

Mr. WHITFIELD. And would your current regulations give you any authority over the incident that happened in Illinois at that cemetery?

Mr. HARWOOD. Well, my understanding is that cemetery was not a not-for-profit cemetery so to that extent our authority would reach the cemetery. The funeral itself doesn't contain provisions currently that would have addressed the conduct that we are concerned about there, the exhuming of bodies and those sorts of things.

Mr. WHITFIELD. OK. Well, thank you. I see my time has expired, Mr. Chairman.

Mr. RUSH. The chair recognizes the gentlelady from Illinois, Ms. Schakowsky, for 2 minutes.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman.

Mr. Earl, do you find what Ms. Brown Holmes has said that people see the whole funeral and burial process as one and I wonder if you could describe how that impacts you if there is some things that go on at the cemetery level?

Mr. EARL. Well, I smiled when Judge Holmes said what she did because that is absolutely true. Any time there is a situation with a crematory, a cemetery, it doesn't matter what it is we were the first to be called. National Funeral Directors Association was the first to be called when all of these situations have happened and occurred because everyone turns to their funeral director when they have this problem. Consumers look to us as funeral directors to solve problems. That is what we do and when they call upon us they want us to take care of one of the biggest problems they have ever had in their life. And when I in my testimony as I am testifying the third-party sellers and all these things that we have today did not occur in 1984 when the rule was put into place, and so we have a different world out there today to deal with, and that is why we feel so strongly that the rules have to be changed. They have to be changed to protect the consumer. The funeral homes have complied. I mean you have heard the testimony here today. The funeral homes have complied with the rule and it has helped the profession as a whole but in order to protect the consumer of today we have to have new laws to prevent some of the things that are happening today.

Ms. SCHAKOWSKY. I just have a few seconds. Mr. Chairman, can I ask one more question?

Mr. RUSH. Sure.

Ms. SCHAKOWSKY. OK, it seems as if one of the most basic responsibilities of a cemetery is to keep clear and orderly records that reflect who is buried there. Families have to be able to find their loved ones. Mr. Elvig, you were saying that someone turned in the keys and said as a small cemetery they could not comply with any stricter rules. Is it really too much to ask that even for a small cemetery that they keep good, retain the records and that they respond to these consumer protections?

Mr. ELVIG. Congresswoman, not at all, that is not too much to ask. As a matter of fact, small, large and middle-size cemeteries they have to rely on quality records to know what they can even sell and what they can use, where they can put markers. Record-keeping in cemeteries are not separable. Good records are very critical. I have urged cemeteries and we are seeing an interesting trend as they convert to electronic record systems, mapping systems, card file systems, we have asked cemeteries across this country to consider giving their old records that were written in pen and ink on cards to archives, the State archives and the likes for research but cemeteries need accurate records.

Ms. SCHAKOWSKY. All right, so what is it that a small, not-for-profit cemetery thinks they could not comply with if we were to change the rules and cover them?

Mr. ELVIG. For example, when you look at the Federal Trade Commission's present rules on funeral homes, on price lists, on dis-

closures, on the types of rule they have it would impose—just asking a small volunteer cemetery to come up with a written price list for all of the varieties of graves and markers and vaults and liners and urns that are available you are talking about a cost, and yet if you are only burying 35 people a year you are talking about a burden on those cemeteries. I know I have been in them. I have audited them. I watch them close.

Ms. SCHAKOWSKY. Thank you.

Mr. RUSH. The chair now recognizes the gentleman from Georgia, Dr. Gingrey, for 2 minutes for the purposes of opening statement.

Mr. GINGREY. Mr. Chairman, I thank you. I have to admit I came here this morning out of respect for my chairman and my ranking member and to make an opening statement and then hopefully to catch up on my e-mails but quite honestly this panel is fantastic. Each and every one of you has done a wonderful job and I have been so interested I haven't even been able to look at my e-mails.

So I am going to ask my question of Judge Holmes. Judge Holmes, I don't know if you ever heard of Lewis Grizzard. Of course, we are talking about the crematory up in Georgia close to my district but I mention Lewis Grizzard. He was a humorist from Georgia, a columnist for many years for the Atlanta Journal Constitution and he spent some of his career in Chicago and then came back to the great State of Georgia. He died a number of years ago far too young but Lewis Grizzard said that nothing good comes out of Illinois and particularly nothing good comes out of Chicago. He didn't have the opportunity to meet Judge Holmes, obviously and based on your testimony I think that he would have liked you very much.

Let me direct my question to you. You mentioned that duplicative and overlapping regulations for funeral products cause confusion amongst consumers in Illinois. It was an issue your task force addressed. Do you have concerns that duplicative regulation by the State and the Federal Government could cause similar confusion?

Ms. HOLMES. No, I don't because the way I read the House bill, I actually thought it was excellent, very concise, to the point, very consumer-friendly, very consumer-oriented, and I read our bill and they mesh together very well. Ours is a little more stringent, I think, and so I would like the opportunity if I were the State I would say well, I would like the opportunity to implement our rules and regulations because they are stricter but if I were a State that had no rules or regulations or if I were one of the States that had a hodgepodge of rules that don't really get to the issue and the Federal Government said to me do something about this, then fine, let's do something about this. I have a friend, and it sort of goes to Congressman Schakowsky's question regarding the small funeral home, she—her family owns the South View Cemetery in Georgia, in Atlanta, Georgia, very small, owned by a small family. It is the funeral, cemetery, I am sorry, it is the cemetery where Martin Luther King was buried before his body was exhumed and taken to their foundation, and she runs that cemetery tremendously. She has rules. She has regulations. She gives price lists. She follows a set of rules that she has imposed, her family has imposed on themselves and it is a beautiful cemetery, and she does it with very little money. So it can be done and the way we view this House bill,

the way I view this House bill, it is not asking you to do anything that you ought not do anyway if you have good conscience and good ethics. And I think that if it is imposed on the States to do this, if the Federal Government either says here is a baseline, you can go beyond the baseline, I think that gets us to a point where the States do something and we don't have to chase the tragedy.

Mr. GINGREY. Thank you very much.

Mr. Chairman, thank you for your indulgence and I really appreciate the testimony of all the witnesses. I yield back.

Mr. RUSH. The chair thanks the gentleman.

The chair now recognizes Mr. Stupak for 2 minutes for the purposes of questioning the witnesses.

Mr. STUPAK. Thank you, Mr. Chairman. Thanks for holding this hearing.

Let me ask Ms. Holmes and Mr. Earl this question if I may. Regulation of prepaid funeral and cemetery contracts in Michigan was enacted in 1986. Michigan law regulates the sale and provision of certain funeral and cemetery merchandise and services including prepaid funerals. All prepaid funeral money must be placed in a State-regulated escrow account by the funeral providers so that it is available when the funeral occurs. Even with these regulations in 2009, there were plenty of scams if you will, concerning prepaid funerals in Michigan. How would this bill address the growing problem of prepaid funeral arrangements that are invalidated, renegotiated after the death or altered in a way to mislead the customer? Mr. Earl and Ms. Holmes or anyone else, Mr. Elvig.

Mr. EARL. I will address it to a certain extent. This House rule would not pertain to pre-need funerals at all.

Mr. STUPAK. So even if the money is in escrow there still is—we are still going to have problems even underneath this bill? And we have people that just embezzled the escrow money and people died and the money was gone and we were caught up in the one. We had 70 funerals.

Mr. EARL. The bill would not address that. You are correct.

Mr. STUPAK. OK, so OK.

Ms. HOLMES. And our task force did not address pre-need because there was another task force that was investigating pre-need but I do think you have hit on another aspect that does need to be covered.

Mr. STUPAK. OK, Mr. Elvig.

Mr. ELVIG. If I could comment.

Mr. STUPAK. Sure.

Mr. ELVIG. I have been a regulator and an auditor. It is very difficult to address because of so many facets to pre-need. For example, divorce, people remarrying and not addressing their pre-needs in divorce, cemeteries being dragged in and saying OK, now you settle it 20 years later on who gets to use what. It really comes right back to what does a State agency do. How does a State regulate unique to its State and that is why we have taken the stand that the States probably are in the best position to regulate like Michigan.

Mr. STUPAK. Sure, but then now with the Internet, you know, you are seeing more and more of this on the Internet. The marketplace for funeral goods and services has really changed with the

Internet and more businesses are selling their products on the Internet so even if we do have local rules like Michigan, I mean you still have those scams but I think the Internet has made it easier to bring more uncertainty to this area where when people prepay or see a director they think there is some certainty other than death that they are dealing with here.

Mr. ELVIG. That is correct, sir.

Mr. STUPAK. So how do we deal with that, I guess we still go back.

Mr. ELVIG. I think that first off you have made a very good point and the other good thing by the way about the Internet has opened up for the consumers still more opportunities to compare shop.

Mr. STUPAK. Sure.

Mr. ELVIG. To decide what they really want and that is a concern we have that as we look at structuring rules and we look at structuring FTC rule that we don't close the door on the future that this industry will evolve in by consumer demand.

Mr. STUPAK. Right.

Mr. ELVIG. We need to listen to those who want to use the services. Well, nobody wants to use the service but when they need to use it.

Mr. STUPAK. Correct.

Mr. ELVIG. You are right on there.

Mr. STUPAK. OK.

Mr. RUSH. The gentleman's time is up.

The chair now recognizes the gentleman from Louisiana, Mr. Scalise for 2 minutes.

Mr. SCALISE. Thank you, Mr. Chairman.

Judge Holmes, in your task force's work you proposed actual legislation that was adopted in Illinois? Was it specific recommendations that you all proposed?

Ms. HOLMES. We didn't write the bill, no. We proposed recommendations. We made findings. We handed those findings over to our state legislature. There was Representative Monique Davis, Representative Dan Brady and several senators who worked on it.

Mr. SCALISE. Some legislators were part of the task force and they drafted the actual law.

Ms. HOLMES. So they worked on the—they drafted the actual legislation but they took our recommendations into account.

Mr. SCALISE. Did they take all of them? Were there any left out?

Ms. HOLMES. There were a couple of provisions that were left off but I am not thinking of what they are right away but they were minor in our view. They took every one of our major recommendations.

Mr. SCALISE. OK and I will include Mr. Elvig and Mr. Earl in this, too. As you look at the law now as it stands in Illinois and of course you all touched on the fact that there are laws in each State but you probably have 50 different variations of the law and regulation process, first, would Illinois now be considered model legislation or is there a State that has kind of a model law? And, you know, and I know in South Louisiana where the district I represent we have cemeteries that are above ground because of the water table so, in fact, many of the cemeteries are considered tourist attractions, believe it or not, and so there are different situa-

tions there. Are the laws that you see across the country, is there a model law that you would recommend or how does it work in terms of what you have seen from your research, both Judge Holmes as well as other panelists.

Ms. HOLMES. For our task force we reviewed several different States and we took the ones that we thought were—we took sort of the best of the best. Florida had a really good law. California had a really good law, both born from tragedy. And we consider our law now to be a model, a national model because we did take the best of the best, and we focused on consumer protection.

Mr. SCALISE. Gentlemen.

Mr. EARL. I would just add that we look—the funeral profession looks at the FTC rule as being a standard for every State. It is a minimum standard for all funeral homes in every State. As has been mentioned, if a State has a higher standard they can opt out of the rule but we also believe that there should be the same standard for all cemeteries, all third-party sellers, some type of a standard and that is all we are asking for so that there is something. There are many States out there that have much better laws than what we are talking about but there are some that have none, zero, so that is what we are asking for in the bill that you are speaking of.

Mr. ELVIG. If I could just add that your comments are right spot-on again concerning the style of burials in Louisiana, above ground because of the water and your State statute addresses that, at least that is what Fran Mayo use to tell me. She was a regulator in your State. Washington State we have Mount Rainier and what do we do about scattering cremated remains in that park and on that mountain. What about the State of Montana where the grounds are frozen a good portion of the year? How do you handle burials and holding bodies for burial in frozen grounds? Issues vary State for State and that is one of the strong reasons for looking to State answers to its State issues so we would urge that that be kept in mind as you look at this bill is the uniqueness of State situation.

Mr. SCALISE. Thank you, Mr. Chairman. I yield back.

Mr. RUSH. The chair would entertain by unanimous consent extend this hearing for an additional round of questions. Each member will be allowed to ask one question of the witnesses and the chair would also like to announce that there is a vote expected in about 15 minutes so I think that one additional question should be able to give us ample time to get over to vote.

The chair would recognize himself for 1 minute to ask a question of Mr. Harwood. Mr. Harwood, are you familiar with the recent sting in Massachusetts of funeral homes by State licensing investigators which has resulted in a 25 percent violation rule with respect to compliance with the FTC's Funeral Rule? My question is that is did the FTC assist Massachusetts at all in those enforcement activities and what is the state of enforcement activities at FTC now as it relates to the Funeral Rule?

Mr. HARWOOD. Mr. Chairman, we learned of the Massachusetts sweep or sting when it was reported in the press and we did not assist the State in its enforcement sweep. That being said, we have historically worked with States that are engaged in funeral enforcement and in each of the last 3 years we worked with at least one

State. For example, on the work we have done this year we worked with Tennessee. Last year we worked with Minnesota. The year before that we worked with Pennsylvania on enforcement rule. So we have a history of working with States. In the case of Massachusetts, they appear to have a law that lets them enforce the Funeral Rule without Federal involvement and that is precisely what they did here.

Mr. RUSH. The chair now recognizes the ranking member, Mr. Whitfield, for one additional question.

Mr. WHITFIELD. Judge Holmes, I would like to ask you another question. Cemeteries frequently have financial difficulties on maintenance at cemeteries and I notice that you indicated that you all established a cemetery relief fund in Illinois and would you expand on that, and how did you fund that?

Ms. HOLMES. Well, it is my understanding right now it is not funded of course because the bill just passed but it is my understanding that it will be funded by fines that it will be started at least by fines that will be levied against individuals who may be in violation of some of the rules that will promulgated by the Illinois Department of Professional and Financial Regulations, as well as by the licensure fees. So now all cemetery owners will have to pay a small fee and what we were told is they are talking about grading the fee based on the number of burials or the size and acreage of the land, et cetera, and so having some money that I think will be the upstart for the fund.

Mr. WHITFIELD. OK and that license, that is required of the funeral home as well as.

Ms. HOLMES. Yeah, the funeral directors are already required to be that. It is the cemeteries are not.

Mr. WHITFIELD. Cemeteries.

Ms. HOLMES. And so the cemeteries will now be required based on whether it is private, religious, et cetera, their levels of licensure. I think religious are exempt.

Mr. WHITFIELD. OK, thank you.

Mr. RUSH. Ms. Schakowsky, you are recognized for one additional question.

Ms. SCHAKOWSKY. Thank you.

Mr. Harwood, the legislation under consideration today would give the FTC the authority to promulgate these regulations under the standard process of the Administrative Procedures Act. How would this provision impact FTC's ability to take action in this area?

Mr. HARWOOD. Under the FTC's current rulemaking authority which I referred to earlier as the Magnus Moss Act it takes the FTC between 3 and 10 years to promulgate a rule. In fact, the Funeral Rule took longer than that but we had—but we were in the learning curve with the Magnus Moss Act at that point. Recently, it has taken us between 3 and 10 years. Where we have been able to use the Administrative Procedures Act, the Act provided for in this rule, this legislation, we have been able to promulgate a rule in a year and so this legislation would allow us to do the same for I think here.

Ms. SCHAKOWSKY. Thank you.

Mr. RUSH. The chair recognizes Dr. Gingrey for one additional question.

Mr. GINGREY. Mr. Chairman, thank you.

You know, I do have a question and it is going to be of Mr. Elvig but I just wanted to make this comment. We have all seen the horrific views of what is going on in Haiti and how they are dealing with the hundreds of thousands of the bodies of the deceased and of course they have no choice I don't think in this situation. We have all seen film clips, of course, from the Holocaust and they had a choice but, you know, it just shows you how important this subject really is. How very important this subject is that people shouldn't be re-gifted in death and that is basically what was happening in the cemetery in Illinois and even worse in the cemetery in Georgia. So I just appreciate the opportunity, Mr. Chairman, to discuss your bill and to have a hearing on it and to get the information from the experts.

My question, Mr. Elvig, in your testimony you state that ICCFA believes that the funeral and cemetery industry is best regulated at the State level, not at the Federal level, yet people say and the testimony here today that some States really do not have very strict cemetery or funeral home laws. A law is made OK, but there is very little enforcement by the States, do you agree with that?

Mr. ELVIG. Well, unfortunately, Mr. Congressman, I don't agree with it. I have been through State laws. I have gotten to know most State regulators one-on-one. I have had them call me about issues they are facing. They do regulate. They go to where the problems are, and they respond to those problems, so I think to say that the States are not carrying their weight is not accurate nor is it adequate. This issue in Illinois, for example, was addressed at that State level and addressed quite well by the Judge and her committee. Again, they deserve to be complimented, but again, that is reacting to an event and not trying to impose nationwide. Yes, the States are regulating. Yes, the States are doing their job. ICCFA files presently are full of information that where the States are moving on various fronts. Many times they seem to be small fronts. The simple issue of what constitutes maintenance in a cemetery. You can argue about that until the cows come home. Maybe you could use some cows but eating the grass but whatever the case is you are talking about State per State issue that is unique State per State and the regulators are doing their job.

Mr. RUSH. That concludes the questioning portion of this hearing, and that being said the chair asks for unanimous consent for testimony of the Funeral Consumer's Alliance that their testimony be entered into the record and hearing no objection, so ordered. The chair wants to announce that the record will remain open for 2 weeks to allow subcommittee members to submit questions to the witnesses to round out the attending record, and the chair again wants to express his appreciation to the fine testimony of each and every one of you. You have contributed greatly to our deliberations and to this legislative process and we owe you our heartfelt gratitude for your experience, and your time, and your testimony.

And now the chair will announce that this committee and this hearing is adjourned and thank all the members for their participation. The committee now stands adjourned.



[Whereupon, at 11:30 a.m., the Subcommittee was adjourned.]  
[Material submitted for inclusion in the record follows:]

**Statement of the Honorable Joe Barton  
Ranking Member, Committee on Energy & Commerce  
January 27, 2010  
Legislative Hearing on the “Bereaved Consumer’s Bill of  
Rights Act of 2009”**

Thank you, Mr. Chairman.

Before I turn to the technical aspects of this bill, I first want to emphasize my deepest sympathy to the families impacted by the horrific events that occurred at Burr Oak Cemetery last year, and to the families that have suffered because of similar traumatic events at other places of final rest. As we hear so often, sunshine is the best disinfectant, and often it only requires our attention to prod action. So I want to thank the Chairman for his efforts on this matter.

Having said that, I believe it is our job in Congress in this instance to be the source of sunshine, and not to enact Federal law in this area. As one of our witnesses points out, each of the instances of

cemetery or funeral service fraud or mismanagement met with State action. I believe States are very capable of regulating in this particular area. States are also equipped to enforce their own laws. And even if the States are not always perfect regulators, I do not believe we want the Federal government policing in this area as well. Are we now bailing out States from enforcement of their own laws? Further, some of the alleged mismanagement is based on something permitted by State law – such as term leases on burial plots or stacked burials – and I do not believe it is the Federal government’s role to overrule the judgment of a State legislature on a law that governs solely intrastate activity.

Beyond these concerns on principle, I have specific concerns about the legislative language before us. One of our witnesses points out that other than addressing the sad state of record-keeping, this bill would have done nothing to prevent the shocking events that occurred at Burr Oaks. Laws are for the law-abiding, and the

individuals responsible in this case certainly were not; existence of a law is never a guarantee of perfect compliance.

At least one of our witnesses also points out that a number of cemeteries are run by non-profits. The burdens of new federal regulations could easily drain these outfits, some of which are run solely by volunteers. I am curious what percentage of both the cemetery industry and the funeral services industry are made up of not-for-profit organizations.

Further, the FTC promulgated its rule covering the provision of funeral services and products without Congressional prompting. Accordingly, it appears self-evident that if the FTC believed there was widespread fraud in the provision of burial plots, it would have the power to address the issue. Moreover, the FTC has never been shy about asking us for what it requires if their authority falls short. The fact is, the FTC testified in July that it could undertake rulemaking procedures if it finds “that the practices addressed are

‘prevalent.’” Because the FTC has not taken action, I must conclude that the FTC has not found such fraudulent and criminal practices prevalent enough to warrant Federal action.

I have further concerns about the specific provisions of this bill – for instance, the provisions on preemption, enforcement, and notice – but my time is limited and we can address these issues at a later date.

I want to underscore my feelings that what occurred at Burr Oaks Cemetery was shocking and inflicted unimaginable and unnecessary pain. But my objection to this Federal regulation is simple – this is not an area appropriate for - or that requires - Federal intervention and I believe the States are fully capable of addressing any regulatory or enforcement gaps themselves.

Thank you, Mr. Chairman, and I yield back.




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Protecting a consumer's right to choose meaningful, dignified, and affordable funerals since 1963

**Testimony on Behalf of Funeral Consumers Alliance, Inc.  
submitted to the House Committee on Energy and Commerce,  
Subcommittee on Consumer Protection  
re: HR 3655  
January 27, 2010**

Prepared by Joshua Slocum, Executive Director, FCA, Inc.

To the Honorable Representatives:

Funeral Consumers Alliance has been informed there may be some concerns about the effect of HR3655, The Bereaved Consumers Protection Act of 2009, on religiously owned or operated cemeteries. As you know, the bill directs the Federal Trade Commission to enact rules holding cemeteries (among other entities) to the same standards that funeral homes have had to follow since 1984. Under HR3655, religious and nonprofit cemeteries will also be subject to these minimum standards, the most important of which are the requirements for cemeteries to give consumers accurate written prices, plus the cemetery's rules and regulations, before the sale is completed.

Bringing all cemeteries—for-profit, non-profit, and religious—under the same minimum consumer protection standards is vital. Regardless of how a cemetery is legally incorporated, and regardless of its faith affiliation, *all grieving consumers are entitled to the same minimum protections*. Whether Jewish, Lutheran, Catholic, or Muslim, all these families are grieving, and all of them are entering into a *commercial transaction* at a time of sorrow and stress. Whether a cemetery is incorporated as a nonprofit operation, or owned by a religious organization, does not change the fact that burying a loved one is often costly and confusing.

Funeral Consumers Alliance can find no legal, ethical, or financial reason why a cemetery's corporate or religious status should allow it to avoid furnishing itemized prices and clear disclosures to purchasers. We know of no religious tenet or practice that would be violated by a requirement to offer accurate information to grieving people before a burial contract is signed. We cannot see how such requirements would financially burden such a cemetery—the cost of printing and distributing a few sheets of paper containing prices, consumer disclosures, and cemetery rules would not exceed a few cents per burial.

We are also concerned about the potentially greater vulnerability of religious consumers when the time comes to choose a cemetery. Members of a congregation of any sort have a natural

tendency to want to be buried “among their own,” and the religious affiliation of a cemetery is a common reason consumers choose a burial ground (choosing a veterans’s cemetery, or a burial ground that’s physically convenient are also common reasons).

Some religious cemeteries are quite explicit in appealing to feelings of religious duty in congregants. The Catholic Archdiocese of Los Angeles states on its website:

The final expression of our faith as Catholics is the blessed and sacred burial in a Catholic cemetery. It is our opportunity to rest among fellow believers, awaiting the resurrection to life everlasting in union with God.

Burial in a Catholic Cemetery is an act of reverence and respect for the body which has housed our soul during our life in fellowship with Christ. Heavenly glory is the destiny for which God intends us. Death is not the end, but a rite of passage to eternal life, to full union with God. It is the sacred right, privilege and loving **duty** of every Catholic to choose such a burial [emphasis added].

The church, of course, is well within its rights to characterize its preferred burial in this fashion. But Catholic or not, it should be clear to any reader that significant theological pressure is being brought to bear on parishioners’ burial choices.

A similar allegiance can be found among members of certain fraternal organizations. The Odd Fellows, for example, operate cemeteries in many parts of the country, and a significant number of members would be expected to choose burial within these properties.

Families committed to burial in a cemetery owned by their church or fraternal organization are especially vulnerable to misleading or unethical sales tactics. Since such families may feel a religious or ethical duty to be buried there, they may feel their choice of cemeteries is limited. It’s easy to see why it’s especially important that such families be given clear, itemized price lists— if they cannot shop around *between* various cemeteries, they can at least shop around *within* the cemetery.

#### **Religious or Nonprofit Status Is Not a Guarantee of Ethical Cemetery Practices**

When we hear the terms “church burial yard,” “Jewish cemetery,” or “nonprofit cemetery,” they conjure up images of cemeteries maintained as a religious benefit, a “public good” for congregants, without regard to commerce. Sadly, that is not necessarily so. In fact—and largely unknown even to most parishioners—the largest Catholic Archdiocese in the country runs its burial operations in a partnership with the second-largest, for-profit, Wall Street-traded funeral and cemetery chain in the nation. In 1997, the LA Archdiocese (which operates 11 cemeteries) announced it would allow Stewart Enterprises, Inc. to build and operate for-profit mortuaries in

its cemeteries. Operating under the name “Catholic Mortuary Services,” Stewart Enterprises today operates six funeral homes on the grounds of the LA Archdiocese’s nonprofit cemeteries.<sup>1</sup>

While the Archdiocese and Stewart Enterprises have characterized this partnership as offering convenient, one-stop arrangements to minister to the funerary needs of Catholics, promotional materials suggest there may be additional motivations. A Glendale, California man sent Funeral Consumers Alliance a direct mail letter he received urging him to prepay for funeral and burial through “Catholic Mortuary Services.” The letterhead includes a stylized Christian cross, and lists the names of six Catholic cemeteries in the Los Angeles Archdiocese: All Souls, Calvary, Holy Cross, Queen of Heaven, Resurrection, and San Fernando Mission. The letter states, in part:

In order to serve the needs of Catholic families better, the Archdiocese of Los Angeles has authorized the construction of mortuaries on land leased at six of its cemeteries . . . . Most importantly, families like yours can now preplan [*that is to say, “prepay”- ed.*] your funeral arrangements . . . We will be happy to discuss with you in further detail the benefits of preplanning and how the new mortuaries will mean better service for Catholic families.

P.S. Mail the postcard in no later than November 26 to receive a preconstruction discount of \$200 off preplanned funeral services.

But the letter **did not say** that Catholic Mortuary Services is a trade name of the for-profit Stewart Enterprises. For all any parishioner would know, this letter, with its religious symbolism, came directly from the church.

Recently, another Los Angeles Catholic sent us a similar flier. Co-branded “Catholic Cemeteries” and “Catholic Mortuaries”—again featuring a stylized cross—the bold headline reads “Preplan Your Catholic Heritage.” The flier features discounts on plots, crypts, and other property, with the exhortation “Buy now for BEST LOCATION.” And, the discounts are good “till November only!!!!” One hardly sees the 6-point type that reads “A subsidiary of Stewart Enterprises.”

Again, the church may run its cemeteries as it sees fit, but it is important to acknowledge the commercial aspect; religiously owned cemeteries may not be solely spiritual endeavors. For some churches, the operation of a cemetery is an important revenue stream. While there is nothing wrong with this, it would be naïve to assume the ordinary consumer abuses that attend commercial transactions would somehow never occur just because the transaction is called “religious.”

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<sup>1</sup> Full disclosure: Funeral Consumers Alliance named Stewart Enterprises as one of four defendants in a case we brought alleging funeral and casket industry collusion to limit competition and raise casket prices for consumers in violation of anti-trust laws. The suit was filed in 2005 and remains ongoing. Funeral Consumers Alliance, as the lead “association plaintiff” is not seeking, and is not entitled to, any monetary damages. Nine individual consumer members join us as plaintiffs.



Given the Los Angeles Archdiocese's "encouragement" to parishioners to choose one of their cemeteries, grieving families are also unwittingly being encouraged (by direct mail, and by the very presence of a "Catholic Mortuary Services" funeral home on cemetery grounds) to spend their funeral dollars at a national chain noted for high prices. Ironically, the for-profit mortuaries on the grounds of these cemeteries must abide by the Funeral Rule. Who could plausibly argue that the family doesn't deserve written prices, itemized choices, and truthful disclosures when they leave the funeral home and step into the cemetery to meet with its staff?

These problems are not restricted to one church, of course; these are merely examples of what can occur at any cemetery, regardless of its affiliation. Similarly, cemeteries that are legally incorporated as nonprofits may actually operate more like big business. In researching her 1998 book documenting funeral and cemetery problems, former FCA executive director Lisa Carlson found two large, national funeral chains had purchased cemeteries in Wisconsin, even though all cemeteries in that state must be "nonprofit" by law. In her 1999 testimony before the Federal Trade Commission (on behalf of FCA), Carlson noted "In Oklahoma, all cemeteries by statute must be run not-for-profit, yet SCI and Loewen [at the time, the 1<sup>st</sup> and 2<sup>nd</sup> largest publicly traded funeral chains] own approximately 25 cemeteries in that state."

#### **Settled American Jurisprudence Allows Regulation of Religious Cemeteries**

There is no question that the government may enact regulations for the general welfare of the public, even if those regulations apply to religious organizations. The US Supreme Court has established this doctrine in a string of decisions dating back to at least 1879. In plain terms, the court has consistently held that regulations which are enacted neutrally, and which apply generally to everyone, do not violate the First Amendment's "free exercise" clause. The only exceptions, the Court has noted, are when laws are enacted with the specific intent of limiting a religious practice or interfering with its free exercise. This is a small sampling from the Court's opinions:

Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. . . . Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. — Reynolds v. United States, 98 U.S. 145 (decided 1879)

Respondents urge us to hold, quite simply, that when otherwise prohibitable conduct is accompanied by religious convictions, not only the convictions but the conduct itself must be free from governmental regulation. We have never held that, and decline to do so now. — Employment Div., Oregon Dept. of Human Resources v. Smith, 494 U.S. 872 (decided 1990)

We have never held that an individual's religious beliefs [494 U.S. 872, 879] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to

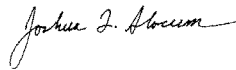
regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition — Ibid.

HR3655, with its direction to the FTC to require all cemeteries to distribute itemized price lists and to give consumers free choice in purchase, is clearly of general applicability. It interferes with no religious practice or belief.

Funeral Consumers Alliance believes in the rights of individuals to freely choose a funeral or burial that is meaningful and affordable. For many families, that means a burial in a cemetery aligned with their religious beliefs. FCA has advocated fiercely for the rights of religious individuals and groups to be free from unnecessary and improper state interference with their private funeral and burial practices. But in those cases, state regulatory authorities had improperly applied commercial licensing law to the private, *commerce-free* actions of religious individuals and voluntary associations.<sup>2</sup>

HR3655 would not have this effect. It merely requires that all cemeteries that sell goods and services to consumers abide by important, easy-to-implement consumer protection requirements. Grieving families of all faiths or no faith are all in the same situation; they are confused, they are in sorrow, and they are faced with spending a significant amount of money. All the bereaved deserve the same minimal level of protection.

Respectfully submitted,



Joshua Slocum  
Executive Director

<sup>2</sup> These cases typically had to do with state regulatory boards attempting to prevent voluntary burial committees from preparing and burying their own dead without hiring a commercial funeral home. In each case, there was no commercial aspect; no money changed hands. Volunteers offered families the service of private burial, free of charge. In each case, the state regulatory boards were attempting to overstep their statutory authority: such boards are typically empowered by statute to regulate only the commercial practice of funeral service (*selling* funerals to the public), not the private, non-commercial activities of families, friends, and church groups.

